RECORD, CASE No. 13,996.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~668~~. 335

BENJAMIN RICH, WALTER WOOD, RICHARD WOOD [illegible] AL., APPELLANTS,

vs.

TAMLIN BRAXTON AND MARY E., HIS WIFE, LA[illegible] MARY E. CAPERTON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES [illegible] THE DISTRICT OF WEST VIRGINIA.

FILED MARCH 14, 1890.

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vs.

TAMLIN BRAXTON AND MARY E., HIS WIFE, LATE MARY E. CAPERTON, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

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1 At a circuit court of the United States for the district of West Virginia continued and held at Parkersburg, in and for the said district, on the 12th day of June, 1882, the following order was made and entered of record, to wit:

ALLEN T. CAPERTON'S HEIRS
vs.
BENJAMIN RICH *et als.*
} In Equity.

This day came the above-named defendants, by Caleb Boggess, Esq., their attorney, and presented an attested copy of the record in the above-styled cause from the circuit court of Braxton county, West Virginia, and the order of removal made therein, and, on motion of the said defendants, by their attorney, it is ordered that said record be filed and said cause be docketed in this court for further proceedings to be had therein.

The record referred to in the foregoing order is in words and figures as follows, to wit:

STATE OF WEST VIRGINIA:

Pleas before the honorable judge of the circuit court of Webster county on the 3rd day of April, in the year 1882.

Be it remembered that heretofore, to wit, on the 8th day of August, in the year 1881, came Tamlin Braxton and Mary E., his wife; William A. Gordon and Harrietta C., his wife; E. J. Caperton, James F. Patton and Malinda C., his wife; Allen Caperton, Robert Stiles and Lelia C., his wife, and Ella Caperton, by their attorney, and sued out of the clerk's office of the circuit court of Webster county their certain writ of summons in chancery against
2 Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Randolph Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Myers, Jesse Hammons, and Adonijah H. Cogar, returnable to the first Monday in September, 1881; which said writ of summons is in the words and figures following, to wit:

"The State of West Virginia to the sheriff of Webster county, Greeting:

We command you that you summon Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Randolph Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Myers, Jesse Hammons, and Adonijah H. Cogar to appear before the judge of the circuit court of Webster county, at the court-house thereof, at rules to be held in the clerk's office of the circuit court of Webster county on the first Monday in September next, to answer a bill in chancery exhibited against them in our said court by Talmin Braxton and Mary E., his wife; William A. Gordon and Harrietta C., his wife; E. J. Caperton, James F. Patton

and Malinda C., his wife; Allen Caperton, Robert Stiles and Lelia C., his wife, and Ella Caperton, and have then there this writ.

Witness B. C. Conrad, clerk of our said court, at the court-house of the said county of Webster, this 8th day of August, 1881, and of the State the 19th year.

B. C. CONRAD."

Upon which process the following return is made, to wit:

"Executed on the within-named Andrew McElwain by delivering to his wife, Margaret McElwain, an office copy at his usual place of abode on the 27th day of August, 1881, and explaining the purport thereof to her, he, the said Andrew McElwain, not being then there found on said 27th Aug., 1881.

H. W. RADER, *S. W. C.*"

"Executed on the within-named Thomas Moyers by deliv-
3 ering to him an office copy of within summons in person on the 27th day of August, 1881.

H. W. RADER, *S. W. C.*"

And thereupon, at rules held in the clerk's office of said court on the first Monday in September, 1881, came the complainants, by their attorney, and sued out an alias summons in chancery against defendants Jesse Hammons and Adonijah Cogar, returnable to rules to be held in the clerk's office of said court on the last Monday in October, 1881, and also filed an affidavit showing that defendants Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward Wood, Randolph Wood, Ferdinand F. Sharp, and D. S. Robinson are non-residents of the State of West Virginia, and ordered that they be proceeded against as non-residents, and thereupon the following order was entered upon the rule docket of the said court by the clerk, to wit:

"Summons returned executed on Andrew McElwain and Thomas Moyers and alias summons awarded *vs.* Jesse Hammons and A. H. Cogar to rules to be held on the last Monday in October next and continued as to them, and affidavit showing that defendants Benj. Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward Wood, Randolph Wood, Ferdinand F. Sharp, and D. S. Robinson are *non* non-residents of West Virginia, filed;" which said alias summons is in the words and figures following, to wit:

"The State of West Virginia to the sheriff of Webster county, Greeting:

"We command you, as heretofore we have commanded you, that you summon Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Randolph Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Moyers, Jesse Hammons, and Adonijah H. Cogar to appear before the judge of the circuit court of Webster county, at the court-

house thereof, at rules to be held in the clerk's office of the circuit court of Webster county on the last Monday in October next, to answer a bill in chancery exhibited against them in our said court by Tamlin Braxton and Mary E., his wife; William A.
4 Gordon and Harrietta C., his wife; E. J. Caperton, James F. Patton and Malinda C., his wife; Allen Caperton, Robert Stiles and Lelia C., his wife, and Ella Caperton, and have then there this writ.

"Witness B. C. Conrad, clerk of our said court, at the court-house of the said county of Webster, this fifth day of September, 1881, and of the State the 19th year.

"B. C. CONRAD."

Which said affidavit was in the words and figures following, to wit:

"STATE OF WEST VIRGINIA, *County of Greenbrier*, } *ss:*

ALLEN T. CAPERTON'S HEIRS & *als.*
vs.
BENJAMIN RICH & *als.*

A. C. Snyder on his oath says that of the defendants in the above-entitled suit instituted and now pending in the circuit court of Webster county and State aforesaid the following are non-residents of the State of West Virginia, as he verily believes, viz., Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward Wood, Randolph Wood, Ferdinand F. Sharp, and D. S. Robinson, and that he makes this affidavit in order that an order of publication may be taken against said defendants.

A. C. SNYDER."

"Taken, subscribed, and sworn to before me, a notary public for the county aforesaid, in said county, this 5th day of September, 1881.

W. E. LEONARD,
Notary Public."

Endorsement on back of said affidavit by clerk, to wit:
"Filed September rules, 1881. B. C. Conrad, clerk."

5 Afterwards, to wit, at rules held in the clerk's office of the said court on the first Monday in October, 1881, the following order was entered upon said rule docket of the said court by the clerk, to wit:

"Order of publication awarded against defendants Benj. Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward Wood, Randolph Wood, Ferdinand F. Sharp, and D. S. Robinson, and cause continued as to defendants Jesse Hammons and Adonijah H. Cogar;" which said order of publication is n the words and figures following, to wit:

"STATE OF WEST VIRGINIA:

At rules held in the clerk's office of the circuit court of Webster county on the first Monday in the month of October, 1881.

ALLEN T. CAPERTON'S HEIRS and Others, Complainants,
vs.
BENJAMIN RICH and Others, Defendants. } In Chancery.

The object of this suit is to declare null and void and set aside the pretended titles under which the defendants claim certain lands in Webster county owned by the plaintiffs, and in the plaintiffs' bill described, especially the pretended titles of the defendants set up under two grants from the Commonwealth of Virginia, one issued to Wm. McClary for 100,000 acres and the other to Henry Banks for 58,500 acres, and quiet the titles of plaintiffs to the lands owned by them in the bill mentioned; and it appearing by an affidavit filed that the defendants Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward Wood, Randolph Wood, Ferdinand F. Sharp, and D. S. Robinson are non-residents of this State, it is ordered that they do appear here at the next rule day after the date of the first publication of this order and do what is necessary to protect their interests in this suit.

Teste: B. C. CONRAD, *Clerk.*

SNYDER, *Sol.*

6 At the next rule day thereafter, to wit, at rules held in the clerk's office of the said court on the last Monday in the month of October, 1881, said alias summons awarded at a former rule day against defendants Jesse Hammons and Adonijah H. Cogar was returned with the following endorsement thereon, to wit:

"Not found this the 26th day of Oct., 1881.

"H. W. RADER, *S. W. C.*"

And the following order was entered upon the rule book by the clerk, to wit:

"The alias summons a'w'd at September rules *vs.* def'ts Jesse Hammons and A. H. Cogar returned not executed. Plaintiffs' bill and exhibits filed and cause continued until the next rule day."

Plaintiffs' Bill.

7 STATE OF WEST VIRGINIA, *County of Webster,* } *ss:*

The bill of complaint of Tamlin Braxton and Mary E., his wife; William A. Gordon and Harrietta C., his wife; E. J. Caperton, James F. Patton and Malinda C., his wife; Allen Caperton, Robert Stiles and Lelia, his wife, and Ella Caperton, plaintiffs, filed in the circuit court of the county of Webster and State aforesaid,

v.

Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Randolph Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Myers, Jesse Hammons, and Adonijah H. Cogar, defendants.

The plaintiffs complain & say:

1. That in the month of July, 1876, Allen T. Caperton departed this life intestate leaving the following-named children, as his heirs-at-law, the plaintiffs: Mary E. Braxton, Harrietta C. Gordon, E. J. Caperton, Malinda C. Patton, Allen Caperton, all of whom are still living.

2. That the Commonwealth of Virginia, by her several patents, granted certain lands as follows: To Robert Morriss 153,900 acres by grant dated March 25th, 1795; to A. C. and Douglas B. Layne 2,738 acres by grant dated September 1st, 1851; to Austin Hollister 9,330 and 5,938 acres by grants dated respectively November 1st, 1855, and February 1st, 1858, and to Abner Cloud 5,000 acres by grant dated March 10th, 1790; that all of said lands are situate on
8 Gauley, Williams, Cranberry, and Cherry rivers and the waters thereof, and at the time said grants issued were in the counties of Greenbrier, Nicholas, and Randolph, in the State of Virginia, but now they all lie in the counties of Greenbrier, Nicholas, and Webster, in the State of West Virginia.

3. That by conveyances regularly made, mediate or immediate, from the grantees aforesaid duly acknowledged and recorded in the proper counties prior to the year 1860 the title to about 50,000 acres of the first and the whole of the other above-mentioned lands were legally vested in fee in the said Allen T. Caperton; that he continued to be the legal owner thereof during his life with the exception of the time between October, 1869, and February, 1874, during which time the title of a part of said land was nominally in the Chesapeake and Ohio Railroad Company, and upon his death the title to and ownership of the same devolved upon his aforesaid children and they are still the owners thereof.

4. That the said Caperton and his children aforesaid have paid

all taxes assessed against said lands or with which the same were charged and chargeable according to law up to and including the year 1880, as shown by certified copies of decrees of the circuit court of the said counties of Webster and Nicholas herewith exhibited, the one from Webster circuit court made August 5th, 1881, and marked Exhibit "A," and the one from the Nicholas circuit court dated August 11th, 1881, and marked "B."

9 5. That the 41,171½ acres mentioned in the said Exhibit "B" is a part of the 50,000 acres of the grant for 153,900 acres owned by said Caperton as aforesaid, and the said tracts of 9,330, 5,000, 5,938, and 2,738 acres, mentioned in said Exhibit "A," are the same that were granted as aforesaid and now owned by the said children and heirs of said Allen T. Caperton.

6. That prior to the year 1868 the title of the said Caperton to the lands aforesaid had never been questioned by any one, and the same was regarded by all persons and was in fact and still is indisputable; that during said year 1868 the defendant Benjamin Rich, one G. P. Shreeve, and Albert Owen, with the intent to defraud the said Allen T. Caperton and others and pirate him of his lands, appeared in said county of Webster and, by connivance with or through the ignorance of the assessor, had entered on the assessor's land book for said county for said year a number of large tracts of land, among others a tract of 100,000 acres in the name of William McCleery, and also a tract of 58,500 acres in the name of Henry Banks; that neither of said tracts had ever been prior to said year 1868 assessed with taxes on said book in the names of the said McCleery and Banks, or any other person claiming title by, through, or under them or either of them; that the said Rich and his confederates had no authority from said McCleery or said Banks to put said lands on said assessor's book; that both said McCleery and Banks had been dead many years prior to that time, and long before their respective
10 deaths had conveyed or forfeited for non-entry for taxes any claim they may have had to said lands, if they ever in fact had any, which is here denied; that the first of said tracts was entered on said book for taxes at the value of eleven cents per acre, and the other at five cents per acre, while the same lands were charged to said Caperton and others at fifty cents per acre; that no taxes were ever assessed or paid on said lands in the name of said Rich and his associates or either of them or in the name of said McCleery or Banks, for the following years, on the 100,000 acres, 1869 and 1870, and on the 58,500 for the years 1869, 1870, 1871, and 1880; but for each of said years said lands were omitted from said books, and no taxes have ever been paid for said years, all of which will fully appear from certified abstracts from the assessor's book of said county, herewith filed as Exhibits "C" and "D" respectively, and from said exhibits it will also appear, and such is the fact, that no taxes had ever been assessed or paid on said tracts of land prior to said year 1868, and when placed on the books for said year as afore-

said no back taxes were brought forward, charged thereon, and paid according to law.

7. That as a further step in the plan of said Rich and his confederates they allowed said two tracts of land to be returned delinquent for the non-payment of the taxes assessed thereon for the year 1868, and at a sale made by the sheriff of said Webster
11 county of said lands in the names of said McCleery and Banks for the delinquent taxes aforesaid, on the 24th day of September, 1869, they, the said Rich, Shreeve, and Owen, became the joint purchasers thereof for said taxes, as will appear from certified abstracts from the report of the list of sales made by said sheriff for said year 1869, herewith filed as Exhibits "E" and "F" respectively; that neither of said lists, Exhibits "E" and "F," show what estate was sold or held in said lands, nor that said lists were returned to the recorder's office within twenty days thereafter, as the statute expressly requires—in fact, they do not show that either was ever recorded by said recorder.

8. That, still pursuing the fraudulent purpose aforesaid, dropping out the said Shreeve and *and* Owen, who were evidently mere instruments or tools, and placing the said Rich and a new confederate, the def't Thornton Conrow, in the lead as the beneficiaries of the fraud, the said Shreeve and Owen assigned and transferred their interests in the purchase of said 58,500 acres to said Rich, and as to said 100,000 acres the said Rich entirely ignored said Shreeve and Owen and had the certificate of purchase issued to him alone by the sheriff, notwithstanding the three had purchased the said 100,000 acres jointly, and the said Rich assigned one moiety of his interest in said 100,000 acres to the said defendant, Thornton Conrow; that subsequently the said Rich and Conrow procured from B.
12 Mallohan, surveyor of said county, what purports to be plats and reports of the said two tracts of land, and then by deeds, each dated September 28th, 1870, James Woodzell, recorder of said county, attempted to convey said 100,000 acres to said Rich and Conrow jointly and the said 58,500 acres to said Rich alone; all of which will more fully appear from certified copies of said deeds, with the receipts of the sheriff and assignment ther-on and the said surveyor's plats and reports attached thereto, herewith filed as Exhibits "G" and "H" respectively.

9. That about this time the said Rich and Conrow discovered a deed, from which it appeared that said McCleery, many years prior to the said year 1868, had conveyed all his title, if any he had, to said 100,000 acres, and then assuming that said title was vested in one De Fleury, Viscount Clifford, and it being too late to have said land placed on the assessor's book for said county for the year 1870 in the name of said De Fleury, they, the said Rich and Conrow, having gained audacity as they proceeded with their fraudulent purpose, recklessly *envirened* the sheriff into their scheme of piracy and fraud and had him, the said sheriff, to make out a report show-

ing that on the 26th day of September, 1871, he had sold said 100,000 acres in the name of said De Fleury for the taxes of 1870 charged in the name of said De Fleury, when in truth and in fact said land had never been assessed in said county for said year 1870 with taxes in the name of said De Fleury or any other person, as is shown by the certificate attached to the aforesaid Exhibit "C;" that a certified copy of said sheriff's report of sales for the year 1871 is herewith filed as Exhibit "I."

13 10. That, determined to make their purpose successful if fraud, recklessly pursued and applied, could make it so, the said Rich and Conrow had the said Mallohan, surveyor, to make another report and plat of said land as sold for taxes in the name of said De Fleury and afterwards, by deed dated October 3d, 1872, based on the last-mentioned pretended sale, the said recorder attempted a second time to convey said 100,000 acres to said Rich and Conrow jointly; all of which will more fully appear from certified copy of said deed, with said surveyor's report and plat attached thereto, herewith filed as Exhibit "J."

11. That by deed dated May 3d, 1872, before the said last-mentioned tax deed, Exhibit "J," had been procured as aforesaid, the said Rich and Conrow, with their respective wives, conveyed to the defendant Ferdinand F. Sharp, *inter alia*, the one "undivided third part or moiety of all their interest, right, title, or claim of, in, and to" the aforesaid tract of 100,000 acres, as shown by a certified copy of said deed, herewith filed as Exhibit "K."

12. That by deed dated December 30th, 1875, the said Rich and wife conveyed to the def't Abram Waltman "an undivided interest" in said tract of 58,500 acres, as shown by a certified copy of said deed, herewith filed as Exhibit "L."

13. That by deed dated March 1st, 1879, the said Conrow conveyed to the def't Walter Wood, *inter alia*, the undivided one-sixth ($\frac{1}{6}$) part of the said 100,000 acres, as shown by a certified copy of said deed, herewith filed as Exhibit "M."

14. That by deed dated October 30th, 1879, the said Rich
14 and wife conveyed to the def't D. C. Robinson the undivided one-third part of said 100,000 acres in trust to secure the payment of a note for $3,210.00, as shown by a certified copy of said deed, herewith filed as Exhibit "N."

15. That by deed dated November 17th, 1879, Joseph A. Thompson and James Woodzell, special commissioners, conveyed to the def't Walter Wood, for himself and the def'ts Richard Wood, Edward R. Wood, George Wood, and Randolph Wood, *inter alia*, the certain one-sixth undivided title or interest in the aforesaid 100,000 acres, the same which had been conveyed on the 15th day of May, 1872, by the def't Ferdinand T. Sharp in trust to said Walter Wood, as shown by a certified copy of said deed, herewith filed as Exhibit "O."

16. That until within the last year none of the defendants have attempted to take actual possession of any part of the lands aforesaid, and until that time neither of them, either by themselves or by tenants or otherwise, occupied in any way any part thereof by possession or actual claim; that within the past year the said def'ts or some one of them pretended to sell, by executing contract to the def't Andrew Wayne, 300 acres, part of the said 58,500 acres, and placed the said Wayne and Thomas Myers in possession thereof, and the *the* said Wayne is still in possession, but says he has paid no part of the purchase-money and does not intend to pay any until his said codef'ts establish a valid title to said land; that the said Rich and others leased to def'ts Asse Hammons and Adonijah Cogar a certain part of said lands at the forks of Williams river, and the said Hammons and Cogar now lives in the land leased to *him* as aforesaid, but the said Hammons and Cogar admit that said Rich and others have no title to said lands, and say that they were deceived by said Rich, and by his fraudulent representations induced to take said lease from him.

17. That the 100,000 acres and 58,500 acres of land aforesaid *is* situate in the counties of Greenbrier, Nicholas, and Webster *counties* and covers and includes *and* as parts thereof the whole of the aforesaid lands now owned by the said Mary E. Braxton and the other heirs of said Allen T. Caperton, dec.; that the 300 acres sold as aforesaid to and now occupied by the def't Andrew Wayne as well as that part of said land leased to the def'ts Hammons and Cogar, are parts of the aforesaid lands of the said children and heirs of said Allen T. Caperton.

18. The pl't'ffs aver and say that all the aforesaid deeds, Exhibits "G," "H," "I," "J," "K," "L," "M," "N," and "O," are inoperative, null, and void, because—

First. Said deeds, Exhibits "G," "H," and "J," were obtained by fraud and collusion, in the manner and by the means hereinbefore recited and set forth.

Second. The said last-mentioned deeds are based on and recite therein facts which not only do not exist but which are directly contradicted by the records and proceedings therein referred to and which are hereinbefore exhibited in the following, among other, particulars, to wit: The said deed "G" recites that the sheriff's report of sales describes the land thereby conveyed as lying on Ganly river and its tributaries, when in fact said report describes said land as lying on Granly and William river; that both said deeds "G" and "H" recite that the lands therein conveyed had been charged and sold as an estate in fee, when in fact no estate whatever was mentioned in the sheriff's report of sales on the assessor's books; that said "J" recites that the land thereby conveyed was assessed with taxes for the year 1870 and sold in 1871, in the name of De Fleury, Viscount Clifford, when in fact said land was

never charged in the name of said De Fleury, nor was it sold in his name for taxes of 1870 or for any other year *any other year*, and the said deeds are otherwise defective and contain material irregularities.

Third. The titles which said deeds purport to convey *was* worthless, because in fact neither the said McCleery, De Fleury, nor the said Banks had any right, title, or claim to said lands or any part thereof; that if either of them ever had any title to said lands the same had been forfeited for their failure to have the same entered on the land books of the proper county and charged with the taxes chargeable therein; that these facts were known to the defendants Rich and Conrow when they had said lands assessed in 1868 with taxes in the names of said McCleery and Banks and when they obtained their deeds for the said lands in 1870.

Fourth. That said Rich and Conrow have forfeited any title to said lands they may otherwise have had by their failure to have them assessed with the taxes thereon and pay the same for the
17 years 1869 & 1870 & 1871, taxes which accrued thereon since they made their alleged purchases.

Fifth. That neither of the plats and reports of B. Mallohan, surveyor, attached to said Exhibits "G," "H," & "J," show that the same has been recorded. The recorder's certificate on each simply recites that it is ordered to be recorded. Tergueron *v.* Donally, 7 W. Va, 114; Dequarier *v.* Harriss, 16 *id.*, 345; that neither of said reports identifies the land, and, in fact, neither of said pretended surveys can be identified.

Sixth. The said 100,000 and 58,500 acres of land having been illegally entered on the assessor's books in 1868 by said Rich and others without paying the back taxes or otherwise complying with the law, they by their said tax deeds can acquire no better title than if they had entered said lands in — own name and had them sold for taxes. If said lands had been purchased by said McCleery and Banks they would have acquired no better title than they had before they obtained their tax deeds, and the def'ts Rich and Conrow, having used the names of said McCleery and Banks to acquire tax titles, must stand or fall with the titles of said McCleery and Banks, and these titles were worthless for the reasons heretofore stated.

That the aforesaid deeds, Exhibits "K," "L," "M," "N," & "O," are each and all inoperative and void because they are based entirely upon the said void and fraudulent deeds, Exhibits "G," "H," & "J," and the facts which render the said last-mentioned deeds void, being matters of record and shown on the face of said deeds, the grantees in each of the said deed- "K," "L," "M," "N," and "O"
18 were bound to take notice of said invalidity, and the latter could acquire no better or more valid title than that of their granters. The said grantees cannot be held to be *bona fide* purchasers without notice, but must be conclusively held to have notice of

all the facts affecting their title which a full examination of the title of their granters would disclose, and their granters' title being invalid on its face their deeds are also invalid.

19. That the pl't'fs are desirous of selling their lands aforesaid and are hindered and obstructed by the pretended titles of the def'ts aforesaid; that so long as their title is disquieted and clouded by said pretended titles of the def'ts it is impossible for them to sell their said lands without much disadvantage and great sacrifice.

Prayer.

The plaintiffs therefore pray that each and all of the exhibits herewith filed may be taken and read as parts of this bill; that each and all of the pretended deeds, Exhibits "G," "H," "J," "K," "L," "M," "N," and "O," may be held and declared inoperative, null, and void as against the pl't'ffs' land aforesaid.

That the aforesaid pretended leases to the d'f'ts Wayne, Hammons and Cogar may be declared null and void, and that said leases and all the deeds to the def'ts aforesaid may be —.

That the title of the pl't'ffs to their lands aforesaid may — quieted.

That a writ of *habeas facias posses-ionem* may be awarded the pl't'ffs against the def'ts and all persons claiming by, through, or
19 under them or either of them — any of the said lands of the pl't'ffs — to the pl't'ffs in possession of their said lands.

That plaintiffs may have such other, further, and general relief as they may — entitled to in the premises and as accords with the rules and principals of equity.

(Signed) TAMLIN BRAXTON & OTHERS,
By Counsel.

[Endorsed:] Caperton's Heirs *v.* Benj. Rich, &c. Copy of bill.

20 EXHIBIT "A" of plaintiffs' bill — in words and figures following to wit:

STATE OF WEST VIRGINIA:

In the Circuit Court of Webster County, August Term, 1881.

AUG. 5.

In the Matter of ALLEN T. CAPERTON'S Tracts of 9,330, 5,000, 5,398, 2,738, and 500 Acres of Forfeited Lands.

On a petition for redemption.

This day — Harrietta E. Caperton and others, heirs-at-law of Allen T. Caperton, deceased, by their counsel, and filed their amended and

supplemental petition; also came P. F. Duffy, commissioner of school lands, and filed his report of the forfeiture of 500 acres of land in the name of A. T. Caperton, and also his report showing the aggregate of taxes and interest due on the 9,330, 5,000, 5,938, and 2,728 acres in the original petition mentioned, and the sum necessary to redeem the aforesaid five tracts of land; which amended and supplemental petition, report upon the forfeiture of the 500 acres of land, and report of the amount necessary to redeem the aforesaid five tracts of land are in the words and figures following, to wit:

First. The amended and supplemental petition.

The amended and supplemental petition of Harrietta E. Caperton, Tamlin Braxton and Mary E., his wife; E. J. Caperton, Wm. H. Gordon and Harrietta C., his wife; Allen Caperton, Ella Caperton, and Robert C. Stiles and Lelia C., his wife, filed in the circuit court of Webster county, in the State of West Virginia.

Your petitioners respectively represent that heretofore they filed their original petition in said court for the purpose of redeeming from forfeiture and sale the following tracts of land, to wit,
21 9,330, 5,938, 5,000, and 2,738 acres, as will appear from said petition, which is here made a part of this amended and supplemental petition.

That in said original petition errors were committed in stating the derivation to the titles of the 5,000 and the 2,738 acres of land therein mentioned; that the true derivation of the said titles is as follows, and not as stated in said petition, to wit: That said tract of 5,000 acres was granted by the Commonwealth of Virginia to Abner Cloud by grant dated March 10th, 1890; that it was forfeited and sold as forfeited and delinquent land by proceedings in the circuit court of Nicholas county in 1842, and was purchased by John Williams, to whom it was conveyed by the commissioner of delinquent and forfeited lands for said county of Nicholas, and the said Williams, by deed dated February 21st, 1850, conveyed the same to Allen T. Caperton; and that the said 2,738 — was granted by the Commonwealth of Virginia to Douglas B. and Alexander C. Lane by grant dated September 1st, 1851; that by deed dated March 18th, 1856, and duly recorded in Randolph county, the said Alexander C. Lane conveyed his moiety of said tract to the said Douglas B. Lane, who, by deed dated April 12th, 1859, conveyed the whole of said 2,738 acres to the said Allen T. Caperton.

That in addition to the matters mentioned in their original petition your petitioners here state that there was granted by the Commonwealth of Virginia, by grant dated on the 1st day of July, 1851, to the said Allen T. Caperton a tract of 500 acres of land lying in Nicholas county (now Webster), on the dividing ridge between Gauley and Williams rivers, which tract was regularly on the assessor's

land book for Webster county in the year 1878 and was returned delinquent for the non-payment of taxes for said year in the name of said Caperton, and was on the 25th day of November, 1879, sold by the sheriff of said county for said taxes and purchased by him on behalf of the State, as will more fully appear from the re-
22 port of P. F. Duffy, commissioner of school lands, herewith filed as part of this petition, marked A. (The title papers for said 500-acre tract and also for the several tracts mentioned in said original petition are here presented for the inspection and examination of the court.) That in the month of July, 1876, the said Allen T. Caperton departed this life intestate, leaving the following children, to wit, the petitioners, Mary E. Braxton, E. J. Caperton, Harrietta C. Gordon, Malinda C. Patton, Allen Caperton, Ella Caperton, and Lelia C. Stiles, all of whom are still living and upon whom the legal title to the aforesaid several tracts of land devolved as such children and heirs-at-law of the said A. T. Caperton, deceased.

That your petitioners are advised and verily believe that there is no person or persons in condition to take the benefit of the forfeiture of the aforesaid lands or any part thereof under the provisions of section three of article thirteen of the constitution of this State, and that they are entitled to redeem the same in the manner provided by the thirteenth section of chapter one hundred and thirty-four of the acts of 1872–'3 of this State.

Your petitioners therefore pray that the relief asked for in the original petition may be granted; that they be allowed to pay into court all the taxes charged and chargeable against said lands, with legal interest due thereon, and that upon the payment of said taxes and interest, with the costs of this proceeding, an order may be entered releasing said lands from the forfeiture aforesaid and restoring the title thereto to your petitioners, and that they have such other, further, and general relief as they are entitled to in the premises.

HARRIETTA E. CAPERTON & ALS.,
Petitioners, by Counsel.

A. C. SNYDER,
Sol. for Petitioners.

23 To the Hon. Henry Brannon, judge of the circuit court for Webster:

The undersigned, commissioner of school lands in and for said county, beg- leave to respectfully report that a tract of five hundred acres of land charged in the name of A. T. Caperton, located on the waters of Gauley and Williams rivers, in said county, was returned delinquent for the non-payment of the State *State*, school, county, and district taxes due thereon for the year 1878 and sold by the sheriff of said county on the 25th day of November, 1879, for said taxes, which, with the interest and damages then chargeable thereon,

amounted to the sum of seven dollars and fifty cents, and was purchased at said sale by the said sheriff for the State, and that the same is now liable to be sold for the benefit of the school fund.

The probable value of said land I estimate at 50 cents per acre.

Respectfully submitted.

P. F. DUFFY,
Com'r School Lands, Webster Co.

To the circuit court of Webster county, in the State of West Virginia:

The undersigned, commissioner of school lands for Webster county, in pursuance of an order made at the April term, 1881, of said court upon the petition of Harrietta E. Caperton and others, heirs-at-law of Allen T. Caperton, deceased, respectfully reports—

That he has carefully examined the records and made calculations of the taxes and interest charged and chargeable against the lands in said petition and order mentioned for the years 1874, 1875, 1876, 1877, 1878, 1879, and 1880, and that he ascertains the aggregate of the taxes and interest calculated at the rate of twelve per centum per annum on the said several tracts of land for the years aforesaid to amount, on the 5th day of August, 1881, to the
24 sum following, to wit:

The 2,738-acre tract	$211 60
" 5,000 " "	457 30
" 9,330 " "	682 33
" 5,938 " "	444 59
	$1,785 82

At the request of the petitioners your commissioner reports the taxes charged and chargeable on a tract of 500 acres of land assessed in the name of A. T. Caperton and fully described in an amended petition about to be filed in said court by said petitioners and is the same land mentioned in your commissioner's report, marked Exhibit "A," filed with this report.

That he has examined the record and carefully calculated the taxes and interest thereon charged and chargeable against said tract of land for the years 1878, 1879, and 1880 and ascertains the same to be, on the 5th day of August, 1881, in the aggregate $18.69.

Restatement.

On the 2,738, 5,000, 9,330, and 5,938	$1,785 82
" " 500-acre tract	18 69
Grand total August 5th, 1881	$1,804 51

Your commissioner therefore reports that the sum necessary to redeem the aforesaid five several tracts of land is $1,804.51 as of the 5th day of August, 1881.

August 4th, 1881.

Respectfully submitted.

P. F. DUFFY,
Com'r of School Lands, Webster Co.

25 And thereupon the matter came on to be heard upon the petition, amended and supplemental petition, and the report of P. F. Duffy, commissioner of school lands for Webster county aforesaid, to which there are no exceptions, and was argued by petitioner's counsel.

Upon consideration whereof it is adjudged, ordered, and decreed that said reports be, and the same are hereby, approved and confirmed. And the petitioners having exhibited to the court their title papers showing that they have title to each of the five several tracts of land mentioned in their petition and amended petition aforesaid, regularly derived from the Commonwealth of Virginia, and the court, being of opinion that the petitioners have a good and valid title to said lands, and it not appearing that there is any person in condition to take the benefit of the forfeiture thereof, doth consent and order that petitioners may redeem said lands from forfeiture.

And thereupon petitioners, with consent of the court, paid into court to the hand- of the said Duffy, commissioner of school lands, $1,804.51, being the amount of taxes and interest due on said lands at this date, and $4\frac{50}{100}$ costs of this proceeding.

It is therefore further adjudged, ordered, and decreed that said several tracts of 2,738, 5,000, 9,330, 5,938, and 500 acres of land have been redeemed, and that they be and stand released from said forfeiture and exonerated and released from all other former taxes and damages, if any such there be, and no sale thereof shall be made on account thereof, and said several tracts of land are hereby reinstated and directed to be entered and charged on the land books of said county of Webster, commencing with the year 1881, in the names of the heirs-at-law of said Allen T. Caperton, deceased.

A copy from the records.

Teste: B. C. CONRAD, *Clerk.*

Nov. 1st, 1881.

26 EXHIBIT "B" of plaintiffs' bill — in words and figures following, to wit:

Nicholas Circuit Court, August Term, 1881.

AUG. 11TH.

In Matter of 15 Tracts of Land Forfeited in the Name of ALLEN T. CAPERTON.

This day James S. Craig, commissioner of school lands for Nicholas county, filed his report, pursuant to an order entered on a former day of this court, showing the aggregate amount of taxes and interest due and unpaid against the fifteen tracts of 41,171½ acres, nine lots of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 300 acres, and 400 acres of land of Allen T. Caperton, dec'd, in Nicholas county, and in the petition of Mary E. Braxton and others, the heirs of the said A. T. Caperton mentioned and described; and thereupon this matter came on to be heard upon the papers heretofore read, the report of School Com'r James S. Craig aforesaid, and the arguments of counsel.

On consideration whereof, the court being of opinion that said report is sufficient and regularly made in all respects, and there being no exceptions filed thereto, it is adjudged, ordered, and decreed that the said report be, and the same is hereby, ratified and confirmed.

And it appearing from said report that the unpaid taxes due and chargeable against said several tracts of land, viz., 41,171½ acres, nine lots of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 300 acres, and 400 acres, since the formation of this State and prior thereto, with interest thereon at the rate of twelve per centum per annum, as required by law, amount, as of this date, to the aggregate sum of $3,100.87; and it further appearing that there is no person in a position to take the benefit of the forfeiture of said lands or any part thereof under the provisions of section 3 of article 13 of the constitution of this State, and the petitioners,
27 the heirs-at-law of said Allen T. Caperton, dec'd, having exhibited to the court their title papers showing that they have title to each of the aforesaid fifteen tracts of land regularly derived from the Commonwealth of Virginia, the court is of opinion and decides that said petitioners, the heirs-at-law of said A. T. Caperton, dec'd, have a good and valid title to each of said several tracts of land and are entitled to redeem the same from forfeiture; and thereupon said petitioners, with the consent of the court, paid into court to the hands of the said James S. Craig, commissioner of school lands, $3,100.87, the full amount of the taxes and interest aforesaid, and $9.00, the costs of this proceeding. It is therefore further adjudged, ordered, and decreed that said fifteen tracts of 41,171½ acres, nine tracts of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 300 acres, and 400 acres of land lying on Gauley, Cherry, Cranberry, and Williams rivers and their waters have been redeemed, and that they be and are released from said forfeiture and exonerated and released

from all other former taxes and damages, if any such there be, and no sale thereof shall be made on account thereof, and the said several tracts of land are each hereby reinstated in all respects as if no such forfeiture had occurred, and the assessor of Nicholas county is ordered and directed to enter said lands in separate tracts on the land books for said county for the year 1881 in the name of Allen T. Caperton's estate, and charge the same with taxes commencing with said year 1881, all prior taxes, including the year 1880, having been paid as aforesaid.

It is further ordered that said James S. Craig, com'r of school lands as aforesaid, do pay over to the parties entitled thereto the said $9.00, costs of this proceeding; that out of the said $3,100.87, taxes and interest aforesaid, he retain ten per centum as and for his commission thereon, and pay the residue to the auditor of this State, as required by law.

A copy.

Teste: A. F. RADER, *Clerk.*

EXHIBIT "C" OF PLAINTIFFS' BILL.

Table of Tracts of Land for the Year 1868 *in Glade Township, in the County of Webster, within the District of A.C. Hamrick, Assessor, with Taxes Thereon at* 20 *Cents on Every One Hundred Dollars Value Thereof.*

Name of the person who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract and description of the land as to water-courses, mountains, or other places on or near which it lies.	Distance and bearing from court-house.		Value of lands per acre, including buildings, &c.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Amount of tax on the whole tract at 20 cents on every $100 value thereof.	Amount of tax for free-school purposes at 10 cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why and upon what authority any alterations were made.				County levy— Being 100 cents on every $100 value thereof.	T'p levy— Being 50 cents on every $100 value thereof.
			Acres.	Fractions.		Bearing from court-house.	Miles.												
McClary, Wm.....	N. J....	Fee..	100,000	.....	Gauley and Williams rivers.	.....	.....	11	.....	1,100 00	22 00	11 00	.....	.....	.....	.....		110 00	22 00
For the year 1869 omitted.																			
For the year 1870 omitted.													Amount of tax for construction of hospital at 5 cents on every $100 value thereof.						
For the year 1871: Rich, Benjamin.....	Pa.....	.....	100,000	.....	Gauley and Williams rivers.	S. W.....	6	10	.....	10,000 00	20 00	10 00	5 00	Transferred from Fleury.				200 00	10 00
													Total tax for State, free school, and hospital purposes.						
For the year 1872: Benjamin Rich & others.	Pa.....	Fee..	100,000	.....	Gauley & Williams rivers.	S. W.....	6	10	.....	10,000 00	20 00	10 00	5 00	35 00	.....	.....		100 *cts.* 100 00	60 *cts.* 10 00
															County levy— Being 50 cents on every $100 value thereof.				District levy— Being 30 — on every $100 value thereof, for school purposes. Being 15 cts. on every $100 value thereof, for road purposes.

For the year 1873: Rich, Benjamin, & others.	Pa.....	Fee..	100,000	.....	Gauley & Williams rivers.	S. W.....	6	10	.....	10,000 00	20 00	10 00	5 00	35 00	.....	1 45	20 00	15 00
For the year 1874: Rich, Benjamin	Pa.	Fee..	100,000	.....	Gauley & Wm. river-....	S. W.....	6	10	.....	10,000 00	20 00	10 00	.....	30 00	.....	80 cts. 80 00	15 cts. 30 00	40 cts. 15 00
For the year 1875: Rich, Benjamin	Pa.....	Fee..	100,000	.....	Gauley & Wm. river-.....	N. W.....	6	30	.....	30,000 00	60 00	30 00	.....	90 00	.....	50 cts. 150 00	58 cts. 135 00	20 cts. 60 00
															County levy— Being 50 cents on every $100 value thereof.		District levy— Being 30 cts. on every $100 value thereof, for school tax.	Being 40 cts. on every $100 value thereof, for building tax.
For the year 1876: Rich, Benjamin	Pa.....	Fee..	100,000	.....	Gauley & Wm. river-	S. W.....	6	30	.....	30,000 00	60 00	30 00	.....	90 00	150 00	60 00	30 00	120 00
For the year 1877: Rich, Benjamin	Penn ..	Fee..	100,000	.....	Gauley and Wm. river-..	S. W.....	6	15	.....	15,000 00	30 00	15 00	.....	45 00	60 cts. 90 00	15 cts. 22 50	40 cts. 30 00	60 cts. 45 00
For the year 1878: Rich, Benjamin	Penn ..	Fee.	100,000	.....	Gauley and Wm. river-..	S. W.....	6	15	.....	15,000 00	30 00	15 00	.....	45 00	65 cts. 97 50	25 cts. 37 50	60 cts. 30 00	60 cts. 37 50
For the year 1879: Rich, Benjamin, and Walter Wood.	Penn ..	Fee..	100,000	.....	Gauley and Wm. river-..	S. W.....	6	15	.....	15,000 00	30 00	15 00	*	45 00	60 cts. 90 00	15 cts 22 50	50 cts. 37 50	25 cts. 60 00
For the year 1880: Rich, Benjamin, and Walter Wood.	Penn ..	Fee..	100,000	.....	Gauley and Wm. river-..	S. W.....	6	15	.....	15,000 00	30 00	15 00	.....	45 00	70 cts. 105 00	25 cts. 37 50	50 cts. 37 50	20 cts. 60 00

*Transferred from Thornton Conrow to Wood.

STATE OF WEST VIRGINIA, } ss:
Webster County, }

IN THE CLERK'S OFFICE OF THE COUNTY COURT OF SAID COUNTY.

I, Ballard P. Conrad, clerk of the county court of said county, do hereby certify that the foregoing is a correct abstract from the assessor's land books of said county for the years 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, and 1880 in relation to a tract of 100,000 acres of land now charged on said assessor's land books in the name of Benjamin Rich and Walter Wood and known as the McClery tract. I also certify that said tract of 100,000 acres of land first appeared on said land books and was assessed with taxes in the year 1868, and that no back taxes were brought up or charged thereon for any year or years prior to 1868; and I further certify that said tract of 100,000 acres has never been charged on said assessor's land books in Webster county in the name of Viscount Clifford De Fleury.

(Seal of court attached here.) In witness whereof I have hereunto set my hand and affixed the seal of said court this 11th day of August, 1881.

BALLARD P. CONRAD, *Clerk*.

EXHIBIT "D" OF PLAINTIFFS' BILL.

Table of Tracts of Land for the Year 1868 *in Fork Lick Township, in the County of Webster, within the District of A. C. Hamrick, Assessor, with Taxes Thereon at* 20 *Cts. on Every One Hundred Dollars Value Thereof.*

Name of the person who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract and description of the land as to water-courses, mountains, or other places in or near which — lies.	Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of land and buildings.	Amount of taxes on the whole tract at 20 cents on every $100 value thereof.	Amount of tax for free-sch. purposes at 10 cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from — transferred, and when and how the owner derived the land, and why and upon what authority any alteration was made.	County levy—	Tp levy--
			Acres.	Fractions.		Bearing from court-house.	Miles.							Being 100 cents on every $100 value thereof.	Being 50 cents on every $100 value thereof.
Banks, Henry.....	New Jersey..	Fee..	58,500	.....	Elk & Gauley.....	E.	.....	5	.....	2,925 00	5 85	2 92	.....	29 25	14 62
For the year 1869 omitted.															
For the year 1870 omitted.															
For the year 1871 omitted.															

Table of Tracts of Land for the Year 1872 *in Fork Lick Township, County of Webster, with Amount of Taxes Thereon for said Year.*

District —. Andrew McElwaine, assessor.

Name of the person who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of —.	Nature of the owner's estate, whether in fee or for life.	Number of acres in each tract.		Name of the tract and description of the land as to water-courses, mountains, or other places on or near which it lies.	Distance and bearing from court-house.		Value of land, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Amount of tax for State purposes at 10 cents on every $100 value thereof.	Amount of tax for free-school purposes at 10 cts. on every $100 value thereof.	Amount of tax for hospital purposes at 5 cents on every $100 value thereof.	Total tax for State, free-school, and hospital purposes.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why and upon what authority any alterations was made.	County levy— Being 100 cents on every $100 value thereof.	Township levy-- Being 60 cents on every $100 value thereof.
			Acres.	Fractions.		Bearing from C. H.	Miles.										
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.
Rich, Benjamin	Pa		30,000		Gauley and Elk river.			20		6,000 00	12 00	6 00	3 00	21 00		60 00	36 00
Same	"		58,500			S.	4	20		117,000 00	23 40	11 70	5 85	40 95		117 00	70 20
Eighteen hundred and seventy-three:															Road tax, 15 cents on —.	145	60 *cts.*
Rich, Benjamin, & others.	Pa	Fee.	10,000		Gauley			20		2,000 00	4 00	2 00	1 00	7 00	3 00	29 00	12 00
Same	"	"	58,500		"	S.	4	20		11,700 00	23 40	11 70	5 25	40 95	17 55	169 65	70 00
For the year 1874:															40 *cts.*	80 *cts.*	15 *cts.*
Rich, Benjamin	Pa	Fee.	10,000		Gauley			20		2,000 00	4 00	2 00		6 00	1 22	6 48	3 24
Same	"	"	58,500		"	S.	4	20		11,700 00	23 40	11 70		35 10	17 55	93 60	46 80
For the year 1875:															20 *cts.*	50 *cts.*	55 *cts.*
Rich, Benjamin	Pa	Fee.	10,000		Gauley			50		5,000 00	10 00	5 00		15 00	10 00	25 00	27 50
Same	"	"	58,500		"	S.	4	"		29,250 00	58 50	29 25		87 75	58 50	146 25	160 97

Table of Tracts of Land for the Year 1876 in Fork Lick District, of the County of Webster, with Amount of Taxes Thereon for said Year within the Assessment District.
A. McElwaine, Assessor.

Name of the person who by himself or by his tenant has the freehold in possession of the land charged	Residence of the owner of the tract of land.	Nature of owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name; local description of land, reference to water-courses, mountains, or other places in or near which it lies.	Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of land and buildings.	Amount of tax for State purposes at 20 cents on every $100 value thereof.	Amount of tax for free-school purposes at 10 cents on every $100 value thereof.	Total tax for State and school purposes.	Explanation of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why and upon what authority any alterations was made.	County levy.	Road tax.	District levy.	Building.
			Acres.	Fraction.		Bearing from C. H.	Miles.								Being 50 cents on every $100 value thereof.	Being 20 cents on every $100 value thereof.	Being 30 cents on every $100 value thereof for school purposes.	Being 10 cents on every $100 value thereof for building purposes.
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.
Rich, Benjamin...	Pa.....	Fee..	10,000	.....	Gauley.....	....	.....	50	.....	5,000 00	10 00	5 00	15 00	.....	25 00	10 00	15 00	50 00
Same..	....	.....	58,500	.....	.....	.....	.....	50	.....	29,250 00	58 50	29 25	87 75	.....	146 25	58 50	87 75	292 50
For the year 1877:															60 *cts.*	15 *cts*	40 *cts.*	60 *cts.*
Rich, Benjamin...	Penn...	Fee..	10,000	.....	Gauley.....	S. E....	6	15	.....	15,000 00	3 00	1 50	4 50	.....	9 00	2 25	6 00	9 00
Same.....	" ...	.....	58,500	.....	Gauley & Wm. riv.	S. E....	4	15	.....	8,775 00	17 52	8 76	26 28	.....	52 56	13 14	35 04	52 56
For the year 1878:															65 *cts.*	25 *cts.*	70 *cts.*	60 *cts.*
Rich, Benjamin...	Penn...	Fee..	.....	.....	Gauley...	S. E ...	6	15	.....	15,000 00	3 00	1 50	4 50	.....	9 75	3 75	10 50	9 00
Same.....	" ...	.....	.....	.....	Gauley & Elk..	S. E....	4	15	.....	8,775 00	17 55	8 78	26 33	.....	57 04	21 94	61 45	52 65
For the year 1879:															60 *cts.*	15 *cts.*	50 *cts.*	25 *cts.*
Rich, Benjamin...	Pa.....	Fee..	10,000	.....	Gauley.....	S. E....	6	15	.....	15,000 00	3 00	1 50	4 50	.....	9 00	2 25	7 50	3 75
Same.....	"	" ..	58,500	.....	Gauley & Elk..	S. E....	4	15	.....	8,775 00	17 55	8 75	26 33	.....	56 66	13 16	43 87	21 93
For the year 1880 omitted.															70 *cts.*	25 *cts.*	50 *cts.*	20 *cts.*

STATE OF WEST VIRGINIA : IN THE CLERK'S OFFICE OF THE COUNTY COURT OF SAID COUNTY.

I, Ballard P. Conrad, clerk of the county court of said county, do hereby certify that the foregoing is a correct abstract from the assessor's land books of said county for the years 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, and 1880, as stated therein, in relation to the tract of fifty-eight thousand and five hundred (58,500) acres of land charged in the name of Benjamin Rich and known as the Henry Banks survey; and I further certify that said tract of 58,500 acres first appeared on said land books in said county for the year 1868, and that no back taxes were brought up and charged thereon prior to 1868.

(Seal of court here attached.) In witness whereof I have hereunto set my hand and affixed the seal of said court this 11th day of August, 1881.

BALLARD P. CONRAD, *Clerk.*

List of Real Estate within the County of Webster Sold in the Month of September, on the 24th Day Thereof, Eighteen Hundred and Sixty-nine, for the Non-Payment of Taxes for the Years 1865, 1866, 1867, & 1868.

Name of persons charged with taxes.	Quantity of land charged.	Estate held therein.	In what township situated.	Local description of lands.	Amount of taxes due thereon for State and school purposes, including interest, damages, and commission, for the years—				Amount of county taxes due thereon, including same for the years—				Amount of township taxes due, including same for the years—				Quantity of land sold.	Name of purchaser.	Amount of purchase-money paid, including int., damages, commission, and fee for receipt.
					1865.	1866.	1867.	1868.	1865.	1866.	1867.	1868.	1865.	1866.	1867	1868.			
Middleton, H. O.	1,000	.....	.....	No. 43, Burgoo c'k	.....	2 62	2 50	1 94	.....	.....	.....	.....	.....	.....	.....	.....	1,000	A. Owen, G. P. Shreve, & B. Rich.	7 68
Same	1,000	.....	.....	" 49, same	.....	2 62	2 50	1 94	.....	.....	.....	.....	.....	.....	.....	.....	1,000	.....	7 68
Same	1,500	.....	.....	" 51, Gauley & Burgoo..	.....	1 96	1 86	1 45	.....	.....	.....	.....	.....	.....	.....	.....	1,500	.....	5 68
Same	1,000	.....	.....	" 39, Branch of Elk	.....	1 31	1 25	97	.....	.....	.....	.....	.....	.....	.....	.....	1,000	.....	3 96
Same	1,000	.....	Glade..	" 24, Back Camp creek..	.....	53	50	39	.....	.....	.....	.....	.....	.....	.....	.....	1,000	.....	1 74
McClary, William.	100,000	.....	Same..	Gauley & Wm. rivers.....	.....	.....	.....	39 60	.....	.....	.....	.....	.....	.....	.....	.....	100,000	.....	41 82

I, Charles McDodrill, sheriff of the county of Webster, do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year for the non-payment of taxes thereon for the years 1865, 1866, 1867, & 1868, and that I am not directly or indirectly interested in the purchase of any of the said real estate, so help me God.

CHARLES McDODRILL, *Sheriff.*

The foregoing oath was subscribed and taken by the said Charles McDodrill, sheriff of Webster county, before me, a justice of the township of Glade, in the said county, in my said township, on this 27th day of September, in the year 1869.

THOMAS M. REYNOLDS, *Justice.*

I, James Woodzell, recorder of the county of Webster, within twenty days after the foregoing list, with the certificate of the oath attached, was returned to me, have made the foregoing accurate copy thereof, and on this 20th day of October, 1869, transmitted the original to the auditor.

JAMES WOODZELL, *Recorder.*

An abstract copy from the record.
Teste:

B. D. CONRAD, *Clerk.*

List of Real Estate within the County of Webster Sold in the Month of September, on the 24th Day Thereof, Eighteen Hundred and Sixty-nine, for the Non-Payment of the Taxes Thereon for the Years 1865, 1866, 1867, & 1868.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	In what township situated.	Local description of land.	Amount of tax due thereon for State and school purposes, including damages and commissions, for the years—	Amount of county tax due thereon, including same for the years—	Amount of township tax thereon, including same for the years—	Quantity of land sold.	Name of purchaser.	Amount of purchase-money paid, including int., damages, commission, & fee for receipt.
T. H. Moffet	300	----	Fork Lick	Point mountain	91 79 75 54			300	Albert Owen	3 40
Banks, Henry	58,500	----	Same	Elk and Gauley	---- ---- ---- 10 52			------	Albert Owen, G. P. Shreve, & B. Rich.	11 20

I, Charles McDodrill, sheriff of the county of Webster, do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year for the non-payment of taxes thereon for the years 1865, 1866, 1867, and 1868, and that I am not directly or indirectly interested in the purchase of any of the said real estate, so help me God.

CHARLES McDODRILL, *Sheriff.*

The foregoing was subscribed and taken by the said Charles McDodrill, sheriff of Webster county, before me, a justice of the township of Glade, in the said county, in my said township, on this 27th day of September, in the year 1869.

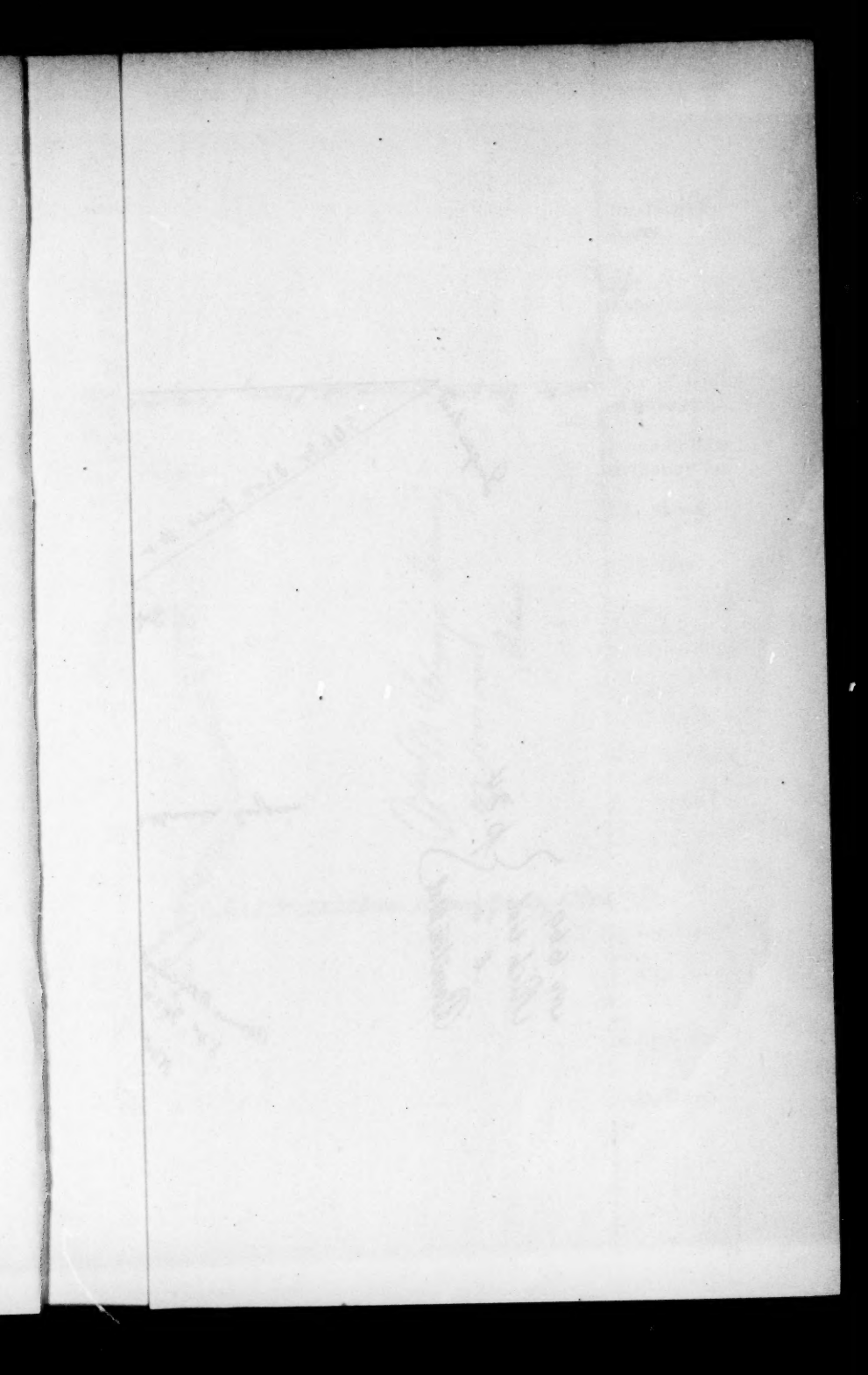
THOMAS M. REYNOLDS, *Justice.*

I, James Woodzell, recorder of the county of Webster, within twenty days after the foregoing list, with the certificate of the oath attached, was returned to me, have made the foregoing accurate copy thereof, and on this 20th day of October, 1869, transmitted the original to the auditor.

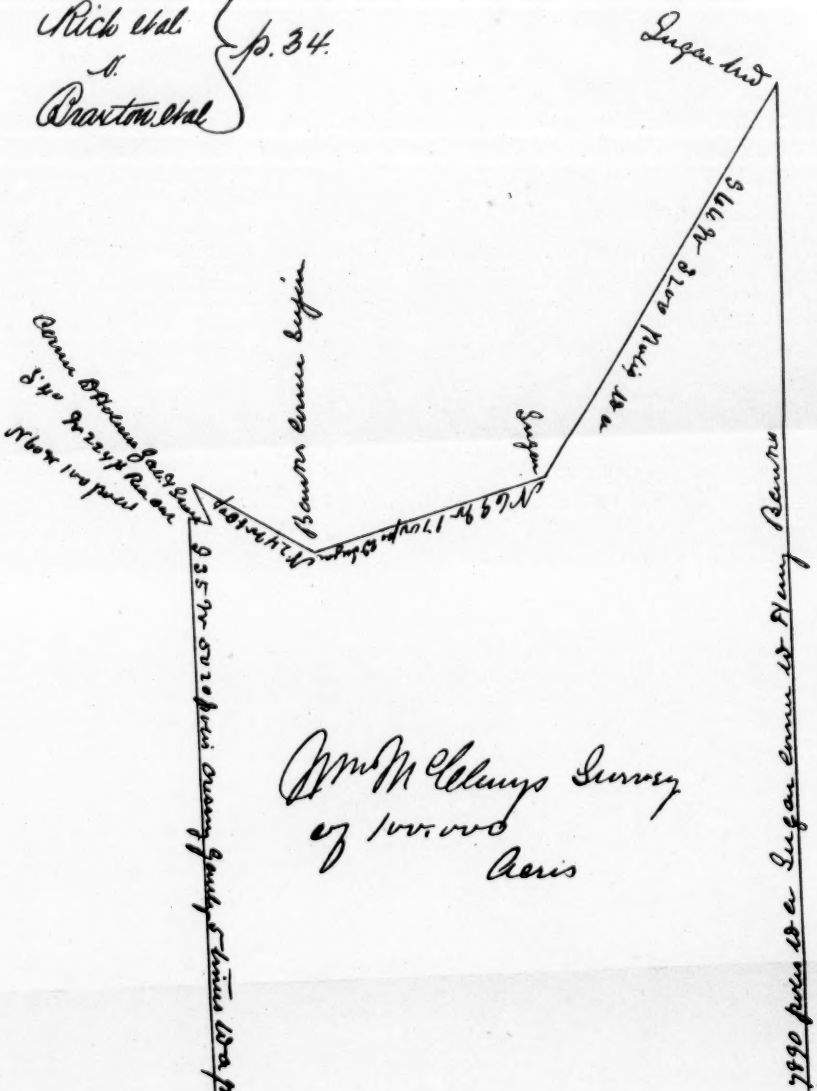
JAMES WOODZELL, *Recorder.*

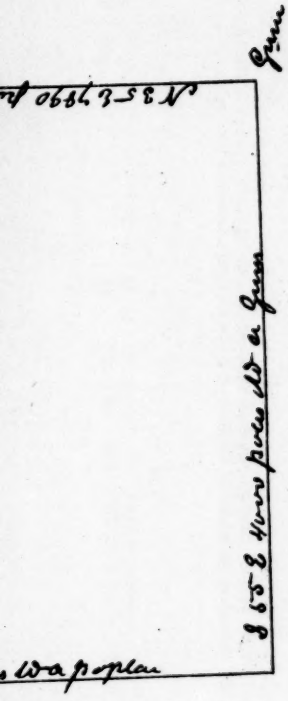
An abstract from the record.
Teste:

B. P. CONRAD, *Clerk.*



No. 669.
Rich et al.
v.
Braxton et al.
p. 34.





32 EXHIBIT "G" OF PLAINTIFFS' BILL.

James Woodzell, Recorder of Webster County, to Benjamin Rich and Thornton Conrow. } Deed for 100,000 Acres.

Memorandum of real estate within the county of Webster sold this 24th day of September, 1869, for the non-payment of taxes thereon for the years 1868.

Name of person charged with taxes, Wm. McClary; quantity of land charged, 100,000 acres. Local description: Quantity of land sold, 100,000 acres; amount of taxes due, 41.58; name of purchaser, Benjamin Rich; amount of purchase-money, 41.83.

Received of Benjamin Rich the above sum of forty-one dollars and eighty-three cents, it being the amount of purchase-money for the land mentioned in the above memorandum.

C. McDODVILL, *Sheriff.*

A copy from the record.
Testo:

B. P. CONRAD, *Clerk.*

Benjamin Rich this day paid to me, James Woodzell, recorder of Webster county, the sum of 106 dollars and 11 cents, the amount of county taxes on a tract of land in Webster county charged to William McClary as 100,000 acres for the year 1868, with interest, which I, the said recorder, certify this 24th day of Sept., 1869.

JAMES WOODZELL, *Recorder.*

I hereby sell, transfer, and assign one undivided one-half
33 of the within certificate to Thornton Conrow, of Phila.

BENJAMIN RICH. [SEAL.]

Sept. 28th, 1870.

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, James Woodzell, recorder of said county, do certify that Benjamin Rich, whose name is signed to the foregoing writing, bearing date the 28th day of Sept., 1870, has acknowledged the same before me in my office.

Given under my hand this 28th day of Sept., 1870.

J. WOODZELL, *Recorder.*

A. copy from the records.
Testo:

B. P. CONRAD, *Clerk.*

(Here follows diagram marked page 34.)

35 & 36

WEBSTER COUNTY,
STATE OF WEST VIRGINIA, *Sept. 28th*, 1870.

I, B. Mollohan, surveyor of lands in the county of Webster and State of West Virginia, beg leave to report the metes and bounds of a tract of land containing 100,000 acres, *of* hereinafter described, for Benjamin Rich to the recorder of deeds, &c., in said county of Webster and State of West Virginia in order that the said recorder may be enabled to make to the said Benjamin Rich, &c., a deed for the said land in accordance with the law of the State of West Virginia in such case made and provided. The said tract of land was sold on the 24th day of September, 1869, by C. McDodvill, the sheriff of Webster county and State of West Virginia, for the non-payment of the taxes due thereon to the State of West Virginia for the year 1868 in the name of William McClary and at said sale the said Benjamin Rich became the purchaser of said tract of land, as will appear by reference to the said sheriff's receipt bearing date on the 24th day of September, 1869, and hereto annexed. The said tract of land as aforesaid is situated on Gauley river and its tributaries, being the same survey that was made for William McClary on the 23rd day of April, 1795, then in Randolph county, Virginia (now Webster county, West Virginia), and adjoins lands of Henry Banks,
37 Holmes, Gale, & Harness and others and bounded as follows, to wit: Beginning at a birch standing on a small rise 40 poles from the mouth of a run that puts into Gauley river south 30° west 1,030 poles from Fork lick; running thence S. 35° W. 5,020 poles, crossing Gauley river five times, to a poplar; thence S. 55° E. 400 poles to a gum, N. 35° E. 7,890 poles to a sugar, corner to said Banks; thence, with three of said Banks' lines, S. 66° W. 3,200 poles to a sugar, N. 69° W. 1,700 poles to a sugar, N. 24° W. 800 poles to a red oak, a corner to Holmes, Gale, and Harness's lands, and, with two lines of their's, S. 4° W. 224 poles to a red-oak stumps on the bank of Gauley, N. 60° W. 100 poles, crossing the mouth of a large run at 40 poles from the beginning, to the beginning, containing 100,000 acres. The whole of said tract of 100,000 acres above described was purchased at the sale aforesaid on the 24th day of September, 1869, by the said Benjamin Rich for the taxes due thereon to the State of West Virginia for the year 1868; amount of taxes, $41.58; amount of purchase-money, including interest, damages, commission, and fee for receipt, $41.83.

Respectfully submitted.

B. MOLLOHAN, *S., W. C.*

Surveyor's fee, $—.

STATE OF WEST VIRGINIA, }
Webster County. }

RECORDER'S OFFICE.

I, James Woodzell, recorder of said county, do certify that
38 I have examined the foregoing report — B. Mollohan &, believing it to be correctly made, do order it to be recorded in my office.

JAMES WOODZELL, *R., W. C.*

A copy from the records.

Testo:

B. D. CONRAD, *Clerk.*

Aug. 5th, 1881.

This deed made the 28th of September in the year 1870, between James Woodzell recorder of the county of Webster and State of West Virginia of the first part and Benjamin Rich and Thornton Conrow of the county of Center and State of Pennsylvania of the second part witnesseth: That whereas a tract of one hundred thousand acres of land described in the assessor's land book as lying and being on Gauly river and its tributaries in the county of Webster, was duly entered for taxation on the land book of the assessor of Webster county for the year 1868 in the name of William McClary and charged with $41.83, taxes for the year aforesaid who was in said book described as residing in New Jersey and as having an estate in fee of in and to said land, and said land was duly assessed with taxes and levies as aforesaid for the said year, and the said books *was* examined and certified according to
39 law and now remain in the office designated by law in said county, that a copy of said assessor's books was delivered to the sheriff of Webster county as a guide in the collection of the taxes assessed therein for the payment of which taxes a lien is declared by law to exist on the real estate so assessed, and the said sheriff after ascertaining which of the taxes so assessed in his county could not be collected did as soon as practicable thereafter make out lists of real estate which was delinquent for the non-payment of taxes thereon; that the lists of land so delinquent *was* presented to the board of supervisors of Webster county and *was* examined by said board and the said board being satisfied of the correctness of said list; that all things required by law or which *was* necessary or proper to be done in the premises *has* been done and performed by said sheriff, received said list and directed the clerk of said board to certify a copy thereof to the auditor and preserve the original list in his office; and whereas the said auditor caused to be delivered to the sheriff of Webster county a list of the real estate therein which at the time said lists were made out were returned delinquent for the
40 non-payment of the taxes for 1868 and previous years and not previously sold therefor and on which the taxes and interest or any part thereof remained unpaid and were not released or otherwise discharged which said lists are made and certified in all respects according to law; and whereas the sheriff upon the receipt of said lists proceeded to give notice in the mode prescribed by law that he would proceed to sell the lands therein mentioned by public auction between the hours of ten in the morning and four in the afternoon, on the 24th day of September, in the year 1869, at the door of the court-house of Webster county unless the taxes, interest, damages and commissions should be sooner paid to the sheriff or into the treasury of the State; and whereas the said taxes remaining unpaid the sheriff did on the 24th day of September in

the year 1869, at the court-house door of Webster county, that being the first day of the circuit court held in the month of September in the year 1869 sell in pu-suance of said notice in the mode prescribed by law a tract of one hundred thousand acres of land mentioned in said list and described as lying on Gauly river and its tribu-
41 taries as aforesaid at which said sale Benjamin Rich became the purchaser of the whole of the said tract at 41.83 that being the amount of taxes interest and charges thereon certified as aforesaid as appears from an accurate copy of a list of said sales together with a certificate of the land attached now on record in the office of the recorder of Webster county. And whereas one year having transpired and the said tract of land not having been redeemed and the said Benjamin Rich purchaser having at his expense caused a report to be made by B. Mollohan the surveyor of lands for the county of Webster in which said land is situated, specifying the metes and bounds of the land sold and giving such description as will identify the same which report bears date the 28th day of September 1870. And the party of the first part seeing no objection to the said report has ordered the same to be recorded in his office and a record thereof made accordingly and is hereby referred to as part hereof. And whereas the said surveyer's report described the said land as being and lying on Gauly river and its tributaries in the county of Webster and is bounded as follows, to wit: Beginning at a birch standing on a small rise 40 poles from the mouth of a run that puts into Gauly river, S. 30 W. 1030 poles from Lick fork runn'g thence S. 35 W. 5020 poles crossi'g Gauly river 5 times to a poplar thence S. 55 E. 4000 poles to a gum thence N. 35 E. 7890 poles to a sugar corner to said Banks thence with 3 of said Banks' lines S. 66 W. 3200 poles to a
42 sugar, thence N. 69 W. 1,700 poles to a sugar thence N. 24 W. 800 poles to a red oak a corner to Holmes Gale & Harness's land and with two of their lines 34 W. 224 poles to a red-oak stump on the bank of Gauly N. 60 W. 100 poles to the mouth of a large run at 40 poles from the beginning to the beginning containing 100,000 acres as appears by the report of the surveyor of lands for Webster county. And the same tract of land that was surveyed for Wm. McClay on the 23d day of April 1795 in the county of Randolph Virginia (now Webster county) and adjoining the lands of Holmes Gale & Harness and Banks and now having recited all the material circumstances appearing in the recorder's office of Webster county relating to said land and to said sale, and the said Benjamin Rich and Thornton Conrow assignee of B. Rich being now entitled to a conveyance—

This deed therefore witnesseth that for and in consideration of the premises and also the sum of three dollars in hand paid the said James Woodzell recorder as aforesaid, hath and doth grant and convey unto the said Benjamin Rich and Thornton Conrow who is assignee of said Rich to ½ interest and to their heirs and assigns forever, all the said lands described in the said surveyor's report herein referred to. To have and to hold the said lands to the said

Benjamin Rich and Thornton Conrow assignee as aforesaid, their heirs and assigns forever.

Witness the following signature and seal.

JAMES WOODZELL, *Recorder.* [SEAL.]

43 STATE OF WEST VIRGINIA, *Webster County,* } *ss:*

I, Thomas M. Reynolds, a justice of the peace of the county aforesaid and township of Glade, do certify that James Woodzell, recorder of Webster county, whose name is signed to the annexed writing bearing date on the 8th day of Sept., 1870, have this day acknowledged the same before me in my said township.

THOMAS M. REYNOLDS, *Justice.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

RECORDER'S OFFICE, *Sept.* 28, 1870.

This deed, with the certificate of acknowledgement to it annexed, was this day presented for record, and it being duly certified therefor is thereupon admitted, as was also the memorandum of sale, the recorder's receipts for county taxes, the assignment of transfer, and surveyor's plat & report.

JAMES WOODZELL, *Recorder.*

A true copy from the record.
Teste: B. P. CONRAD, *Clerk.*

44 EXHIBIT "H" OF PLAINTIFFS' BILL.

James Woodzell, Recorder, to Benjamin Rich. } Deed for 58,500 Acres.

Memorandum of real estate within the county of Webster sold this 24th day of September, 1869, for the non-payment of the taxes thereon for the year 1868.

Name of person charged with taxes, Henry Banks; quantity of land charged, 58,500; amount of taxes, $10.95; name- of purchaser-, Albert Owen, G. P. Shreve, and Benjamin Rich; amount of purchase-money, $11.20. Received of Albert Owen, G. P. Shreve, and Benjamin Rich the above sum of eleven dollars and twenty cents, it being the amount of purchase-money for the land mentioned in the above memorandum.

C. McDODDRELL, *Sheriff.*

Transferred to G. P. Shreve and the recorder will make the deed of my interest to him.

ALBERT OWEN.

This day personally appeared before me, A. B. Clark, justice for the township of Buckhamere, in said county of —, Albert Owen, whose

name appears above to the foregoing transfer — G. P. Shreve, and acknowledged the said transfer to be his act and deed for the purposes therein named or mentioned.

Given under my hand this 23d day of Sept., 1870.

A. B. CLARK, *Justice.*

45 I hereby assign and transfer the within certificate to Benjamin Rich.

G. P. SHREVE. [L. S.]

STATE OF WEST VA., *Webster County,* } *To wit:*

I, James Woodzell, recorder of said county, do certify that Greenville P. Shreve, whose name appears above, has this day acknowledged the above transfer to be his act and deed.

Given under my hand this 28th day of Sept., 1870.

JAMES WOODZELL, *Recorder.*

Albert Owen, G. P. Shreve, and Benjamin Rich this day paid to me, James Woodzell, recorder of Webster county, the sum of thirty-one dollars, the amount of county taxes on a tract of land in Webster county charged to Henry Banks as 58,500 acres, Elk and Gauly, for the year 1868, with interest, which I, the said recorder, certify this the 24th day of Sept., 1869.

JAMES WOODZELL, *Recorder.*

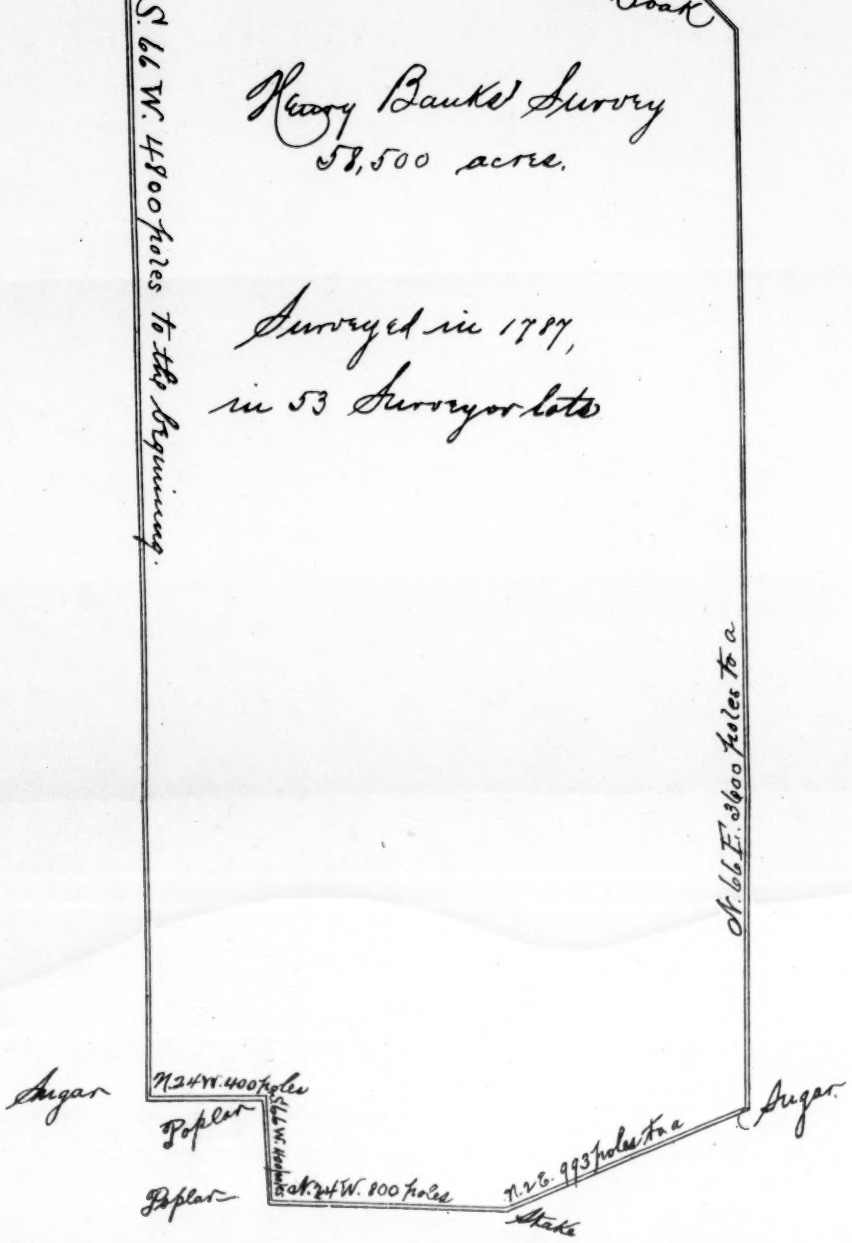
A copy.
Teste:

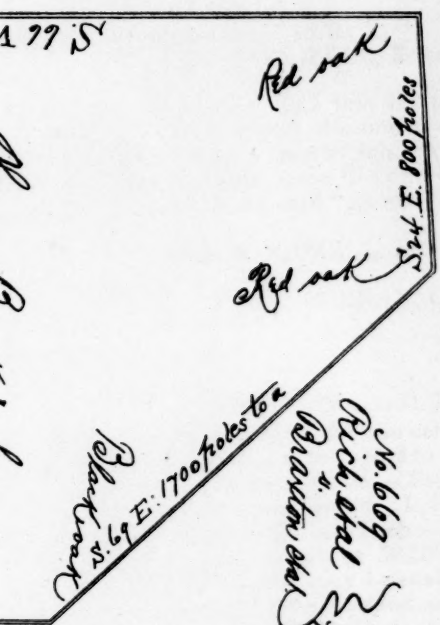
B. P. CONRAD, *Clerk.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

SEPT. 28TH, A. D. 1870.

I, B. Mollehan, surveyor of lands within and for the county of Webster and State of West Virginia, beg leave to report to the recorder of deeds, &c., in the county and State aforesaid, fee — Benjamin Rich, assignee in part of Albert Owen and G. P. Shreve,
46 who conveyed their interest therein to the said Rich — a certain tract or piece of land containing about 58,500 acres, hereinafter described, in order that the recorder may be enabled to make to the said Benjamin Rich a deed for the said land, as is required by law of West Virginia in such cases made and provided. The said tracts of land was sold on the 24th day of September, 1869, by C. McDodrell, then sheriff of said county of Webster and State of West Virginia, for the taxes due thereon to the said State of West Virginia for the year 1868 in the name of Henry Banks; amount of taxes, $10.95; amount of purchase-money paid to the said sheriff, including interest, damages, commissioner's fee for receipt, $11.20; and at the said sale the said Albert Owen, G. P. Shreve, and Benjamin Rich became the purchasers of said tract of land; all of which will more fully appear by reference to the said sheriff's receipt, bearing date Sept. 24th, A. D. 1869, which said report is hereto attached as part hereof. The said tract of 58,500 acres of land as aforesaid lies


Oak
Henry Banks' Survey
58,500 acres.
Surveyed in 1787,
in 53 Surveyor lots
S. 66 W. 4900 poles to the beginning.
N. 66 E. 3600 poles to a
Sugar
N. 24 W. 400 poles
Poplar
S. 66 W. 4900 poles
Poplar
N. 24 W. 800 poles
N. 66 E. 993 poles to a
Stake
Sugar



on Elk, Holly, and Gauley rivers, in the said county of Webster and State of West Virginia, formerly in Randolph county, Va., and was in said county of Randolph surveyed for Henry Banks in the year 1787 in 53 tracts or lots; said tract adjoines the lands of Wm. McClary and others, and bounded as follows, to wit: Beginning at a red oak on the north side of Gauley river, running thence S. 24 E.
480 poles to Gauley, crossing the same; same course 320 poles
47 to a red oak standing between Gauley & Williams river (distance on this line 800 poles); thence S. 69° 1,700 poles to a black oak, thence N. 66 E. 3,600 poles to a sugar, thence N. 2 E. 993 poles to a stake, thence N. 24 W. 800 poles to a poplar, thence S. 66 W. 400 poles to a poplar, thence N. 24 W. 400 poles to a sugar, thence S. 66 W. 4,000 poles, crossing Elk river, to the beginning, containing 58,500 acres.

Respectfully submitted.

B. MOLLOHAN, *Surveyor.*

STATE OF WEST VIRGINIA:

RECORDER'S OFFICE OF WEBSTER COUNTY, *Sept.* 25, 1870.

I, James Woodzell, recorder of said county, do hereby certify that I have examined the foregoing plat and report and, believing it to have been correctly made, have ordered it to be recorded in this office.

JAMES WOODZELL, *Recorder.*

A copy from the record.
Teste:

B. P. CONRAD, *Clerk.*

(Here follows diagram marked p. 48.)

49 This deed, made the 28th day of September in the year 1870, between James Woodzell recorder of Webster county and State of West Virginia of the first part and Benjamin Rich in part assignee of Albert Owen and G P Shreve of the county of Center and State of Pennsylvania of the second part, witnesseth: That whereas a tract of 58,500 acres of land described in the assesser's land books as lying and being on Elk and Gauly rivers in the county of Webster, was duly entered for taxation on the land books of the assessor of Webster county for the year 1868 in the name of Henry Banks and cha-ged with $10.25 taxes for the year aforesaid, who was in said books described as having an estate in fee of in and to said land, and said land was duly assessed with taxes and levies as aforesaid for said year, and the said books were exam'ed and certified according to law, and now remain in the office designated by law in said county, that a copy of said assessor's book was delive'd to the sheriff of Webster county as a guide in the collection of taxes assessed thereon, for the payment of which a lien is declared by law to exist on the real estate so assessed, and the said sheriff after ascertaining which of the taxes assessed in his county could not be collected did as soon as practicable thereafter make a list of real estate

which was delinquent for the non-payment of taxes thereon, that the list of land so delinquent was presented to the supervisors
50 of Webster county and was examined by said board the board being satisfied with the correctness of the list, that all things required by law or which were necessary or proper to be done had been and performed by said sheriff, received said list and directed the clerk of said board to certify a copy thereof to the auditor and preserve the original list in his office and whereas the said auditor caused to be delivered to the sheriff of Webster county lists of the real estate therein which at the time of said lists were made out were returned delinquent for the non-payment of the taxes for the year 1868 and previous years and not previously sold therefor, and on which the taxes and interest or any part thereof remained unpaid and were not released or otherwise discharged and which said lists were made out and certified in all respects according to law and whereas the said sheriff upon the receipts of said lists proceeded to give notice in the mode prescribed by law that he would proceed to sell the lands therein mentioned by public auction between the hours of ten in the morning and four in the afternoon on the 24th day of September in the year 1869 at the door of the court-house of Webster county unless the said taxes interest damages and commissions should be sooner paid to the said sheriff or into the treasury of the State. Whereas the said taxes remaining unpaid the sheriff did on the 24th day of September in the year 1869, at the court-house door of Webster county that being the first day of the circuit
51 court held in said month of September in the year 1869, sell in pursuance of said notice in the mode prescribed by law a tract of 58,500 acres of land mentioned in said list and described as lying on Elk and Gauley rivers as aforesaid at which said sale the said Benjamin Rich Albert Owen an- G P Shreve became the purchasers of the whole of said tract at $11.20 that being the amount of taxes, interest, and other charges thereon certified as aforesaid as appears from an accurate copy of said list of sales together with the certificate of the court attached now on record in the office of the recorder of Webster county. And whereas one year from the time of the said sale having transpired, and the said tract of land not having been redeemed and the said Benjamin Rich Albert Owen and G P Shreve the purchasers having at their expense caused a report to be made by B. Mollihan the surveyor of lands for the county of Webster, in which the land is situated specifying the metes and bounds of the land sold and giving such description thereof as will identify the same, which report bears date the 28th day of Sept 1870, and the party of the first part as recorder seeing no objection to the report has ordered the same to be recorded in his office, and a record thereof made accordingly and is here referred to as part hereof. And whereas the said report of the surveyor described the said land as lying on Holly Elk and Gauley rivers in the county of Webster and is bounded as follows to
52 wit: Beginning at a red oak on the north side of Gauley river run-ing thence S 24 E 480 poles to Gauley river crossing the same, same course 320 poles to a red oak between Gauley

and Williams river- distance on this line 800 poles, thence S 69 E 1,700 poles to a black oak thence N 66 E 3,600 poles to a sugar. Thence N 2 E 993 poles to a stake thence N 24 W 800 poles to a poplar thence N 24 W 600 poles to a poplar thence S 66 W 400 poles to a poplar thence S 24 W 400 poles to a sugar. Thence S 66 W 4,800 poles crossing Elk river to the begin-ing. The said tract of 58,500 acres as aforesaid was surveyed for Henry Banks in 1787, which said tract was divided into lots or surveys then in Randolph county Va (now Webster county W Va) and adjoin-g the lands of Wm McClary and others containing 58,500 acres as appears by the report of the surveyor of lands of Webster county, and the said tract of 58,500 acres as aforesaid was purchased by the said B Rich A Owen and G P Shreve and the said Owens assigned his ⅓ interest therein to the said G P Shreve and the said Shreve conveyed his entire interest being ⅔ to the said Benjamin Rich as will appear by the sheriff's receipt attached to the surveyor's report of said sale. And now having recited all the material circumstances appearing in the recorder's office of Webster county relating to said land and of said sale, and the said Benjamin Rich assignee as aforesaid being now entitled to a conveyance, this deed therefore, witnesseth
53 that for and in consideration of the three premises and also the sum of three dollars in hand paid the said James Woodzell recorder as aforesaid hath and doth grant and convey to the said Benjamin Rich and to his heirs and assigns forever, all the said land described in said surveyor's report herein referred to, to have and to hold the said land to the said Benjamin Rich and to his heirs and assigns forever. Witness the following signature and seal:

JAMES WOODZELL, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Thomas M. Reynolds, a justice of the county aforesaid, do certify that James Woodzell, recorder of Webster county, whose name is signed to the annexed writing, bearing date on the 28th day of September, 1870, has this day acknowledged the same before me in my said township.

THOMAS M. REYNOLDS, *Justice.*

STATE OF WEST VIRGINIA, *Webster County.* }

RECORDER'S OFFICE, *Sept.* 28, 1870.

This deed, with the certificate of acknowledgment to it annexed, was this day presented for record, and it, being duly certified, therefore is thereupon admitted, as well as the sheriff's memorandum, with the assignments thereon, the recorder's receipt for county taxes, and surveyor's plat and report.

JAMES WOODZELL, *Recorder.*

A copy from the record.
Teste:

B. P. CONRAD, *Clerk.*

List of Real Estate within the County of Webster Sold in the Month of September, 1871, *for the Non-Payment of the Taxes Thereon for the Year* 1869-1870.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	In what township land situated.	Local description of land.	Amount of taxes due thereon for State & school purposes, including interest, damages, & commissions. For the year—		Amount of county tax due thereon, including same. For the year—		Amount of township tax, including same. For the year—		Quantity of land sold.	Name of purchaser.	Amount of purchase-money paid, including interest, damages, commissions, and fee for receipt.	Date of each sale.
					1869.	1870.	1869.	1870.	1869.	1870.				
Duffy, Virginia	83	----	----	Grassy creek.	------	29	----	86	------	--------	83	Bernard Mollehair.	7 63	26th Sept.
De Flury, Viscount Clifford.	100,000	----	----	Gauly & Williams river.	------	72 85	------	208 13	------	--------	100,000	B. Rich & T. Conrow.	325 55	" "

I, Hayes W. Rader, deputy for Austin Rader, sheriff of the county of Webster, do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year for the non-payment of taxes thereon for the year- 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, & 1870, and that I am not directly or indirectly interested in the purchase of said real estate, so help me God.

H. W. RADER, *Deputy*, for A. RADER, *Sheriff*.

Sworn and subscribed to before me this — day of October, 1871.

J. WOODZELL, *Recorder*.

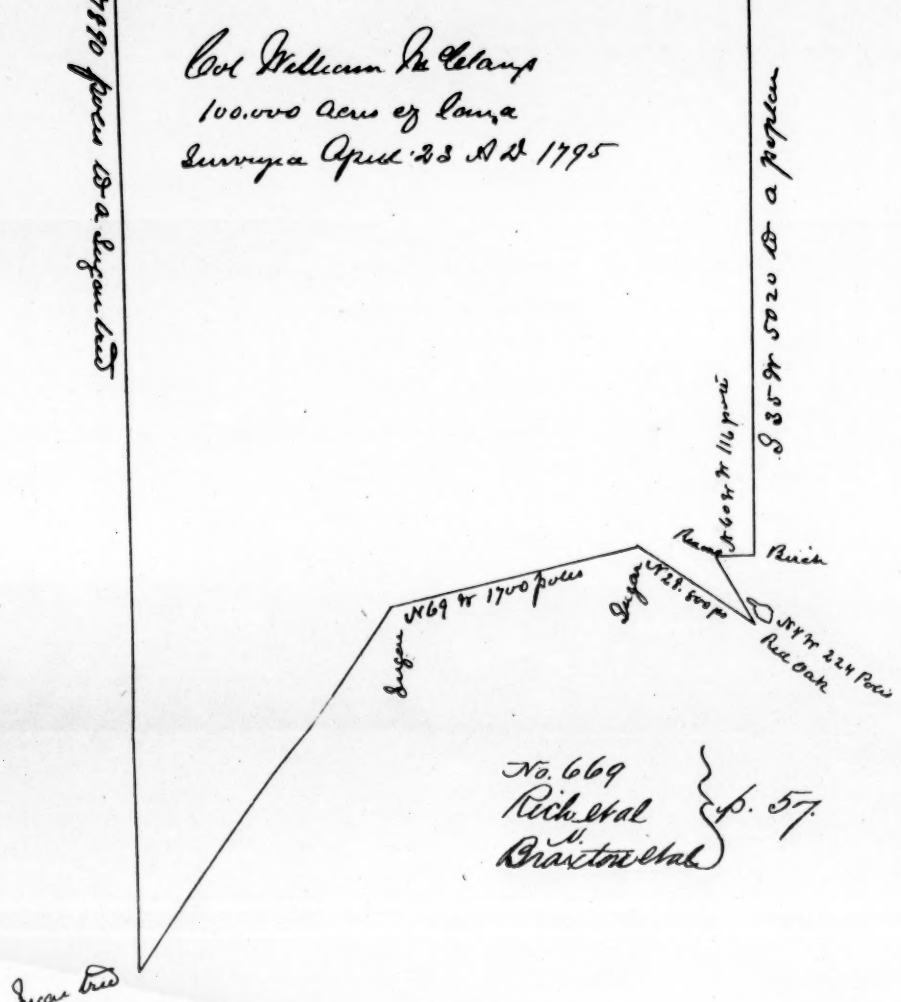
An abstract from the record. Teste:

B. D. CONRAD, *Clerk*.

An abstract from the record.

Teste:

B. D. CONRAD, *Clerk.*



No. 669
Rich et al
v.
Braxton et al
p. 57

A Copy from the record
Testd
B P Conrad Clerk

55 EXHIBIT "J" OF PLAINTIFFS' BILL.

Sheriff of Webster County
to
Benjamin Rich and Thornton Conrow. } Memorandum of Sale.

Memorandum of real estate within the county of Webster sold this 26th day of September, eighteen hundred and seventy-one, for the non-payment of taxes thereon for the year eighteen hundred and seventy.

Name of person charged with tax, De Fleury Viscount Clifford; quantity of land charged, 100,000 acres; estate held therein, fee; in what township situated, Glade; local description of land, Gauly and Williams river-; amount of taxes due thereon for State and school purposes, including interest, damages, and commissions, for the year 1870, $72.85; for the year ——, —; amount of county tax due thereon, including same for the year 1870, $208.13; for the year ——, —; amount of township tax due thereon, including same for the year ——, —; total, including interest, damages, $325.15; quantity of land sold, —; name- of purchasers, Benjamin Rich and Thornton Conrow; amount of purchase-money paid, including interest, damages, commissions, and fee for receipt, $339.80.

Received of Benjamin Rich and Thornton Conrow the sum of three hundred and thirty-nine dollars and 80 cents, it being the whole amount paid by him for the purchase of the land mentioned in the above memorandum and the fee for this receipt.

H. W. RADER, *Deputy*,
For A. RADER,
Sheriff of Webster Co.

56 STATE OF WEST VIRGINIA, }
Webster County. }

RECORDER'S OFFICE, *October* 2, 1872.

This memorandum was this day presented to this office and admitted to record.

J. WOODZELL,
Recorder, W. Co.

A copy from the record.
Teste: B. P. CONRAD, *Clerk.*

(Here follows diagram marked p. 57.)

58 STATE OF WEST VIRGINIA, }
County of Webster. }

SURVEYOR'S OFFICE, *Oct.* 2, *A. D.* 1872.

I, Bernard Mollohan, survey- of lands for said county and State aforesaid, beg leave to report for Benjamin Rich, of Center Co., Pen., and Thornton Conrow, of Philadelphia Co., Pa., the metes and

bounds of a certain tract of land containing 100,000 acres hereinafter described to the recorder of deed- in said county of Webster and State aforesaid, in order that said recorder may be enabled to make to said Benjamin Rich and Thornton Conrow a deed for the said land, in accordance with the provisions of law in such cases made and provided. The said tract of land was sold on the 26th day of September, A. D. 1871, by A. Rader, then sheriff of said county and State aforesaid, for the non-payment of taxes due thereon for the year 1870 in the name of De Flury Clifford; amount of taxes charged and due thereon to the said State and school purposes, $72.85; for county purposes, $208.13; total amount of purchase-money paid the said sheriff, including interest, damages, commissions, and fee for sheriff's receipt, amount-g to $339.80; and at said sale the said Benjamin Rich and Thornton Conrow, as aforesaid, became the purchasers of the whole tract of land as aforesaid, as will appear by the said sheriff's memorandum and receipt for the purchase-money thereof, dated September 26th, A. D. 1871, and hereto annexed.

The same tract of land lies on Gauley, Williams, Cranberry,
59 and Cherry rivers, in Webster county, and adjoins lands of Henry Banks, John Holmes, George Gale, and George Harness, bounded and described as follows, to wit: Beginning at a birch, corner of said Holmes, Gale, and Harness, which tree stands on a small rise about 40 poles from the mouth of a large run that puts into Gauley river about 1,030 poles from hickory corner at Fork lick, running thence with their lines S. 35 W. 5,020 poles, crossing Gauly river 5 times, to a poplar; thence S. 55 E. 4,000 poles to a gum and white oak; thence N. 35 E. 7,890 poles to a sugar, corner to said Banks' survey; thence with 3 of said Banks' lines S. 66 W. 3,200 poles to a sugar; N. 69 W. 1,700 poles to a sugar; N. 24 W. 800 poles to a red oak, a corner of said Holmes, Gale, & Harness; thence with 2 of their lines S. 4 W. 224 poles to a red oak standing on the bank of Gauly river about 3 poles from the Widow Sawyer's fence, above chestnut pointers; thence N. 60 W. 116 poles, crossing the mouth of the aforesaid run, to the beginning, containing 100,000 acres after reduction of 37,052 acres of prior claims, it being the same tract of land that was surveyed for Col. William McClary on the 23d day of April, 1795, the same having been conveyed as appears by sundry deeds and conveyances now upon record in said county of Webster, showing that the same land was held in fee simple by the said De Flury Viscount Clifford.

The said tract of land lies upon the rivers and waters as above
60 described, and was surveyed on the 23d day of April, in the year A. D. 1795, by Edward Jackson, surveyor of Randolph county, Virginia, and recorded in said county of Randolph in Surveyor's Book No. 1, page 147, in which county said land was then situated, but is now situated in said county of Webster, in the State of West Virginia.

Respectfully submitted.

BERNARD MOLLEHAN,
Surveyor of Webster County.

Surveyor's fee, $—.

STATE OF WEST VIRGINIA, *County of Webster,* } ss:

RECORDER'S OFFICE, *October* 3, 1872.

This report was this day examined and approved by me and ordered to be recorded in my said office.

JAMES WOODZELL,
Recorder, Webster Co.

A true copy from the record.
Teste:

B. P. CONRAD, *Clerk.*

James Woodzell, Recorder, to Benjamin Rich and Thornton Conrow. } Deed for 100,000 Acres of Land Sold in the Name of Viscount Clifford De Flury.

This deed made on the 3rd day of October in the year 1872, between James Woodzell recorder of the county of Webster and State of West Virginia of the first part and Benjamin Rich and Thornton Conrow of the counties of Center and Philadelphia and State
61 of Pennsylvania of the second part witnesseth: That whereas a tract of one hundred thousand acres of land described in the assessor's land book as lying and being on Gauley Williams Cherry and Cranberry rivers in the county of Webster, was duly entered for taxes in the land books of the assessor of Webster county for the year 1870 in the name of Viscount Clifford De Flury and charged three hundred and twenty-nine dollars and eighty cents taxes for the year aforesaid, who was in said books described as having an estate in fee simple in and to said land. And said land was duly assessed with taxes and levies for the said year, and the books were examined and certified according to law; and now remain in the office designated by law in said county

That a copy of said assessor's books was delivered to the sheriff of Webster county as a guide in the collection of the taxes assessed therein, for the payment of which taxes a lien is declared by law to exist on the real estate so assessed. And the assessor after ascertaining which of the taxes so assessed in his county could not be collected, did as soon as practicable thereafter make out lists of real estate which was delinquent for the non-payment of taxes thereon, that the list of lands so delinquent was presented to the boards of supervisors of Webster county and was examined by said board. The said board being satisfied of the correctness of said lists, that all things required by law, or which were necessary or proper to be done in the premises had been and performed by said sheriff,
62 who received said list and directed the clerk of said board to certify a copy thereof to the auditor and preserve the original lists in his office.

And whereas the said auditor caused to be delivered to the said sheriff of Webster county lists of the real estate therein which at the time the said lists were made out were, returned delinquent for the non-payment of the taxes for 1870 and previous years and not pre-

viously sold therefor and on which the taxes and inter-t or any part thereof remained unpaid and were not released or otherwise discharged which said lists are made and certified in all respects according to law. And whereas the said sheriff upon the receipt of said lists proceeded to give notice in the mode prescribed by law that he would proceed to sell the lands therein mentioned by public auction between the hours of ten in the morning and five in the afternoon on the first day of the next term of the circuit court of Webster county in the year 1871 at the door of the court-house of Webster county unless the taxes interest damages and commissions should be sooner paid to said sheriff or into the treasury of the State; and whereas the said taxes remaining unpaid, the sheriff did on the 26th day of September in the year 1871, sell in pursuance of said notice in the mode prescribed by law a tract of one hundred thousand acres of land mentioned in said list and described as lying on Gauley Williams Chery and Cranberry rivers as aforesaid at
which said sale the said Benjamin Rich and Thornton Conrow
63 became the purchaser- of the whole of said tract at three hundred and thirty-nine dollars and eighty cents that being the amount of taxes interest and other charges thereon certified as aforesaid as appears from accurate copy of a list of said sale together with a certificate of the oath attached, now on record in the office of the recorder of Webster county and whereas one year from the time of said sale having transpired and the said tract of land not having been redeemed the said Benjamin Rich and Thornton Conrow having at their expense caused a report to be made by Bernard Mollihan the surveyor of lands of the county of Webster in which the land is situated specifying the metes and bounds of the lands sold and giving such description as will identify the same which report bears date the 2d of October 1872.

And the party of the first part as recorder seeing no objection to the report has ordered the same to be recorded in his office and a record thereof made accordingly, and is here referred to as part hereof. And whereas the said surveyor's report described the said land as lying on Gauly Williams Cherry and Cranberry rivers in the county of Webster and is bounded as follows to wit: Beginning at a birch corner of lands of Holmes Gale and Harness, which said tree stands upon a small rise about 4 poles from the mouth of a small run that puts into Gauly river about 1030 poles from a hickory corner at Fork lick running thence with said Holmes Gale &
Harness line S 35 W 5020 poles crossing said river 5 times
64 to a poplar, thence S 15 E 4000 poles to a poplar thence S 55 E 4000 poles to a gum & white oak thence N 35 E 7890 poles to a sugar corner to Henry Banks survey, thence with 3 of said Banks lines S 66 W 3200 poles to a sugar N 69 W 1700 poles to a sugar, N 24 W 800 poles to a red oak corner to said Holmes Gale & Harness thence with 2 of their lines S 4 W 224 poles to a red oak standing on the bank of Gauly river about 3 poles above the Widow Sawyers fence, chestnut pointers there, thence N 60 W 116 poles crossing the mouth of the aforesaid run to the place of beginning containing one hundred thousand acres after the reduction

of thirty-seven thousand and fifty-two acres of prior claims containing 100,000 acres after the reduction of 37052 acres of prior claims, as appears by the report of the surveyor of lands for Webster county and the said tract of land was surveyed for Col William McClary on the 23d day of April 1795 the same having since been conveyed as appears by sundry deeds and conveyance now upon record in said county of Webster, showing that the same land was held in fee simple by Viscount Clifford De Flury but was sold on the 24th day of September 1869 in the name of William McClary for the non-payment of taxes thereon for the year 1868 and previous years and was purchased by Benjamin Rich and the same conveyed to Rich and Thornton Conrow by deed bearing date September 28 1870, the said tract of land was surveyed on the 23d day of April 1795, by
65 Edward Jackson surveyor of Randolph county Virginia and of record in said county in Surveyor Book No 1 page 147, but now in the county of Webster West Virginia. And now having recited all the material circumstances appearing in the recorder's office of Webster county relating to said land and to said sale, and the said Benjamin Rich and Thornton Conrow being now entitled to a conveyance this deed therefore, witnesseth, That for and in consideration of the premises and also of the sum of three dollars in hand paid the said James Woodzell recorder as aforesaid hath and doth grant and convey unto the said Benjamin Rich and Thornton Conrow their heirs and assigns forever, all the said land described in the said surveyor's report herein referred to, to have and to hold the said land to the said Benjamin Rich and Thornton Conrow their heirs and assigns forever.

Witness the following signature and seal

JAMES WOODZELL *Recorder* [SEAL]

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, P. F. Duffy, a justice of the county aforesaid and township of Fork Lick, do hereby certify that James Woodzell, recorder of Webster county and State of West Virginia, whose name is signed to the annexed writing, bearing date on the 3d day of October, 1872, has this day acknowledged the same before me in my said township.

P. F. DUFFY, *Justice.*

66 STATE OF WEST VIRGINIA, *Webster County.* }

RECORDER'S OFFICE, *October 3d*, 1872.

This deed, with the certificate of acknowledgment to it annexed, was this day presented in this office for record, and it, being duly certified therefor, is therefore admitted.

J. WOODZELL, *Recorder.*

A copy from the record.
Teste:

B. P. CONRAD, *Clerk.*

67 EXHIBIT "K" WITH PLAINTIFF'S BILL.

Benjamin Rich & Wife and Thornton Conrow and Wife
to
Ferdinand F. Sharp.

This indenture made this 3d day of May in the year of our Lord one thousand eight hundred and seventy-two, between Benjamin Rich and Martha Jane his wife of Centre county State of Pennsylvania and Thornton Conrow and Sarah Ann his wife of the city of Philadelphia of the other part witnesseth,

That the said party of the first part for and in consideration of the sum of seventeen thousand dollars in lawful money of the United States of America unto them well and truly paid by the said party of the second part at and before the sealing and delivery of these, the receipt whereof is hereby acknowledged have granted bargained and sold aliened enfeoffed released confirmed and by these presents do grant bargain sell alien- enfeoff release and confirm unto the said party of the second part his heirs and assignes the one undivided third part or moiety of all their interest right title and claim in and to the following three tracts of land in the county of Webster and State of West Virginia described as follows. First beginning at a birch standing on a small rise 40 poles from the mouth of a run that puts into Gauly river S 30 west 1030 poles from Fork lick, running thence S 35 W 5020 poles crossing Gauly river 5 times to a
68 poplar. Thence 55° E 4000 to a gum thence N 35° 7890 poles to a sugar corner to said Banks. Thence with 3 of said Banks' lines S 66° W 1700 poles to a sugar. Thence N 24 W 800 poles to a red oak a corner to Holmes Gale & Harness land and with three of these lines S 4 W 224 poles to a red oak stump on the bank of Gauly river. N 60 W 100 poles from the beginning to the beginning containing 100,000 acres as appears by the report of the surveyor of lands for Webster county. And the said tract of one hundred thousand acres being the same tract of land that was surveyed for William McClay on the 23 day of April 1795 in the county of Randolph Virginia, (now Webster county West Virginia) and adjoins lands of Holmes Gale & Harness and Banks.

Second. Beginning at a locust tree corner to lands of George Messurgbird running thence S 57 E 4020 poles to a white oak thence 48° E 1235 poles to Drenney's house thence N 18° E 2170 poles to a sugar standing on the top of the Allegheny mountain. Thence N 61° E 1600 poles to a pine tree. Thence N 53 W 560 poles to a white oak. Thence S 23° W 5100 to the beginning, it being the same tract of land that was surveyed for James Welch on the 1st day of June A D 1795, then in Randolph county Virginia (now Webster county West Va) and adjoins the lands of George Messigbird containing one hundred and five thousand (105,000) acres as appears by the report of the surveyor of lands for Webster county.

The said tract of 105000 acres as aforesaid was purchased
69 on the 24th day of September 1869. The said Albert Owen assigned his entire interest in said purchase to Benjamin Rich.

And on the 28th day of September 1870, the said Benjamin Rich assigned and conveyed one undivided half of the same to Thornton Conrow.

Third. Beginning at a sugar tree thence N 108 poles to a birch N 58° W 1120 poles to a stake standing on the bank of Gauly river. Thence west 185 poles to a beech S 67° W 790 poles to a cucumber near the mouth of said Turtle or Turkey creek. Thence S 8° W 710 poles to a sugar S 26 E 810 poles to a locust corner to James Welch 105,000-acre tract. Thence N 64° 1945 poles to the beginning, it being the same land that was surveyed for George Messegbird on the 10th day of May 1795 then in the county of Randolph Virginia (now in Webster county West Virginia) lying on the waters of Gauly river at the mouth of Turtle or Turkey creek and adjoins lands of James Welch and others containing twelve thousand five hundred acres as appears by the report of the surveyor of lands for Webster county. And the said Albert Owens G P Shreve and B Rich the purchasers of the said tract of land 12500 acres entire who assigned their right to said purchase by various assignments duly acknowledged to Benjamin Rich and Thornton Conrow as shown by the purchaser's certificate attached to the said surveyor's report, the deeds to the party of the first part for the above-described three tracts of land being duly recorded in the recorder's
70 office in Webster county State of West Virginia in Deed Book No 1 pages 385 to 397 as will more fully and at large appear together with all and singular the ways waters water courses rights liberties privileges hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining and the reversions and remainders rents issues and profits thereof and all the estate right title interest property claim and demand whatsoever, of the party of the first part in law equity or otherwise howsoever of in and to the same and every part thereof. To have and to hold the said moiety or undivided third part of the three parts of lands above described, hereditaments and premises hereby granted as mentioned and intended so to be with the appurtenances unto the said parties of the second part his heirs and assigns against them the said party of the first part their heirs executors and against all and other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof firmly under them or either of them shall and will warrant and forever defend

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals dated the day and year first above written

BENJAMIN RICH [SEAL]
MARTHA JANE RICH [SEAL]
THORNTON CONROW [SEAL]
SARAH A. CONROW [SEAL]

Signed sealed and delivered in presence of
T J GEARY
CHARLES GUEST
SAMUEL B HERY

[$17.50 U. S. int. rev. stamp.]
6—669

71 CENTRE CO., PA.:

On the third day of May, anno Domini 1872, before me, a justice of the peace in and for the county aforesaid, personally appeared the above-named Benjamin Rich and Martha Jane, his wife, and in due form of law acknowledged the above indenture to be their act and each of their act and deed and desired the same to be recorded as such; and the said Martha Jane, being of full age and separated and apart from her said husband by me thereon privily examined and the full contents of the above deed being by me first made known to her, did thereupon declare and say that she did voluntarily and of her own free will and accord sign, seal, and, as her act and deed, delivered the above indenture, deed, or conveyance without any coercion or compulsion of her said husband.

Witness my hand and seal this the day and year aforesaid.

T. J. GEARY, *J. P.*

STATE OF PENNSYLVANIA, }
County of Centre. }

Prothonotary Seal of Centre Co.

I, John Marion, prothonotary of the court of common pleas in and for said county of Centre, do hereby certify that Thomas G. Geary, Esq., before whom the within deed was acknowledged, was at the time of so doing an acting justice of the peace in and for said county, duly commissioned and qualified and authorized by the laws of the Commonwealth to take such acknowledg-
72 ments; that his signature appended thereto in attestation — in the proper handwriting of said justice.

Witness my hand and the seal of the said court this 4th day of May, A. D. 1872.

JOHN MARION, *Pr'ty.*

STATE OF PENNSYLVANIA, }
City & County of Phila., } *ss:*

Be it remembered that on this tenth day of May, A. D. 1872' before me, the subscriber, a commissioner for the State of West Virginia, duly commissioned and qualified, personally appeared Thornton Conrow and Sarah A. Conrow, his wife, to me known as two of the parties who executed the within indenture, and acknowledged that they had signed, sealed, and delivered the same as their voluntar*i*ly act and deed for the uses and purposes therein expressed: and the said Sarah A. Conrow, wife of the said Thornton Conrow, on separate examination by me apart from her said husband, and the contents of this indenture having been fully made known to her, acknowledged that she had executed the same freely and without any fear or compulsion of her said husband.

Witness my hand and official seal this day and year
[SEAL.] aforesaid.

SAMUEL B. HENRY,
Com'r for West Virginia in Pennsylvania.

Received the day and date of the above indenture, of the above-named Ferdinand L. Sharp, seventeen thousand five hundred dollars, the consideration mo-y in full.

BENJAMIN RICH.
THORNTON CONROW.

73 STATE OF WEST VIRGINIA, }
County of Webster. }

RECORDER'S OFFICE, *June* 6, 1872.

This deed, with the certificate of acknowledgment to it annexed, was this day presented in the office for record, and it, being duly certified, is thereupon admitted.

JAMES WOODZELL,
Recorder, W. Co.

A copy from the record.
Teste: B. P. CONRAD, *Clerk.*

73½ EXHIBIT "L" OF PLAINTIFFS' BILL.

Benjamin Rich & Wife to Abram Waltman. } Deed, ⅛, 58,500 Acres.

This indenture made the thirtieth day of December in the year of our Lord one thousand eight hundred and seventy-five between Benjamin Rich of the borough of Unionville county of Centre and State of Pennsylvania and Martha Jane his wife of the one part and Abram Waltman of Skinner's Eddy of the county of Wyoming State of Pennsylvania of the other part, witnesseth. That the said Benjamin Rich and Martha Jane his wife for and in consideration of the sum of six thousand two hundred and fifty dollars lawful money of the United States of America unto them well and truly paid by the said Abram Waltman at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged have granted bargained sold aliened enfeoffed released and confirmed and by these presents do grant bargain sell alien- enfeof*ed* release *release* and confirm unto the said Abram Waltman his heirs and assigns an undivided one-eighth interest of a certain tract of land being and lying on Elk Holly and Gauley rivers in the county of Webster State of West Virginia bounded and described as follows to wit: Beginning at a red oak on the north side of Gauley river running thence south twenty-four degrees (24°) east four hun-
74 dred and eighty (480) poles to Gauley river crossing the same, same cou-ses continued 320 poles to a red oak standing between Gauley and Williams river distance on this line 800 poles. Thence S 69° E 1,700 poles to a black oak thence N 66° E 3,600 poles to a sugar, thence N 2° E 993 poles to a stake, thence N 24° W 800 poles to a poplar thence S 66° W 400 poles to a poplar, thence N 24 W 400 poles to a sugar thence S 66° W 4,800 poles

crossing Elk river to the place of beginning, the contents of the entire tract being 58,500 acres

The said tract of 58,500 acres being the same levy being then embraced within the then limits of Randolph county Virginia (but now lying in Webster county West Virginia) was surveyed Henry Banks in the year A D 1787, and was divided into 53 lots or surveys and which being duly returned delinquent for the non-payment of taxes for the year 1868 and previous years was on the 24th day of September 1869 in accordance with the laws of the State of West Virginia in such case made and provided sold by the sheriff of Webster county West Virginia at public auction the said Benjamin Rich party hereto with one Albert Owens and one G P Shreve becoming the purchasers of the same and which said tract the said Albert Owens having assigned his interest therein to the said G P Shreve and the said G P Shreve having subsequently assigned his interest unto and the said Benjamin Rich and the period limited for the redemption of the same having expired without such redemption having been made was by deed dated the 28
75 day of September A D 1870 in accordance with the laws of the State of West Virginia in such case made and provided granted and conveyed by James Woodzell recorder of said county of Webster unto the said Benjamin Rich party hereto his heirs and assigns forever, as in and by the said deed recorded in Deed Book No. 1 pages 397, 401 of the land records of Webster county West Virginia relating thereto, had will more fully appear. Together with all and singular an undivided one-eighth interest in the ways waters water courses, rights liberties privileges heredit-ments and appurtenances whatsoever thereto belonging or in anywise appertaining and the reversions and remainders, rents, issues and profits thereof, and all the estate right title interest property claim and demand whatsoever of them the said Benjamin Rich and Martha Jane his wife in law equity or otherwise howsoever of in and to an undivided one-eighth part thereof. To have and to hold the said undivided one-eighth of said tract of land hereditaments and premises hereby granted or mentioned and intended so to be with the appurtenances unto the said Abram Waltman his heirs and assigns to and for the only proper use and behoof of the said Abram Waltman his heirs and assigns forever.

And the said Benjamin Rich and Martha Jane his wife for themselves their heirs executors and administrators do by these presents covenant grant and agree to and with the said Abram Waltman his heirs and assigns, that they the said Benjamin Rich and Martha Jane his wife and their heirs and singular the undivided one-
76 eighth of said tract of land hereditaments and premises hereinabove described and granted or mentioned and intended so to be with the appurtenances unto the said Abram Waltman his heirs and assigns against them the said Benjamin Rich and Martha Jane his wife and their heirs and against all and any and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof by from or under them or any of them, shall and will warrant and forever defend.

In witness whereof the said parties to these presents have hereunto interchangeable set their hands and seals dated the day and year first above written.

BENJAMIN RICH. [SEAL.]
MARTHA JANE RICH. [SEAL.]

Sealed and delivered in the presence of us—the words "the same and every part thereof" in line 6 being erased and the words an undivided one-eighth part of the said tract of land in line 18 interlined before executed—

A. J. GUEST.
CHARLES GUEST.

Received the day of the date of the within or foregoin- indenture, of the within Abram Waltman, six thousand two hundred and fifty dollars, the consideration money within mentioned.

BENJAMIN RICH.

CENTER CO., *s-:*

On the 21st day of January, A. D. 1876, before W. A. To-
77 bias, recorder in and for said county, appeared the above-named Benjamin Rich and Martha Jane, his wife, and in due form of law acknowledged the above indenture to be their and each of their act and deed and desired that the same might be recorded as such; and the said Martha Jane Rich, being of full age and separate and apart from her said husband by me thereon privat-ly examined, and the full contents of the above deed being be me first made known unto her, did thereupon declare and say that she did voluntarily and of her own free will and accord sign, seal, and as her act and deed deliver the above indenture, deed, or conveyance without any coercion or compulsion of her said husband.

Witness my hand and official seal the day and year aforesaid.

[SEAL.] W. A. TOBIAS, *Recorder.*

WEBSTER COUNTY COURT,
CLERK'S OFFICE, *July* 24, 1879.

This deed, from Benjamin Rich and wife to Abram Waltman, with the certificate of acknowledgement to it annexed, was this day admitted to record in this office.

Teste: BALLARD P. CONRAD, *Clerk.*

A copy from the records.

B. P. CONRAD, *Clerk.*

78 EXHIBIT "M" OF PLAINTIFFS' BILL.

Thornton Conrow to Walter Wood. } Deed for $\frac{1}{6}$ Part of 100,000 and $\frac{1}{6}$ Part of 30,000 Acres on Gauly Williams and Cranberry Rivers.

This indenture made this 1st day of March 1879 between Thornton Conrow of the city of Philadelphia party of the one part and

Walter Wood of the city aforesaid of the other part. Witnesseth, that for and consideration of the sum of $5,000.00 lawful money of the United States of America unto him well and truly paid by the said Walter Wood at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, have granted bargained sold aliened enfeoffed released confirmed and by these presents doth grant bargain sell alien- enfeoff release and confirm unto the said Walter Wood his heirs and assigns the undivided sixth part ($\frac{1}{6}$) of that certain mes-uage and tract of land lying and being on Gauley Williams Cherry and Cranberry rivers in the county of Webster and State of West Virginia, bounded and described as follows, to wit: Beginning at a birch corner of lands of Holmes Gale and Harness, which tree stands upon a small stream about 40 poles from the mouth of a small run that puts into Gauly river 1030 poles from a hickory corner at Fork Lick running thence with said Holmes Gale & Harness line S 35 W 5220 poles crossing said run five times to poplar, thence S 65 E 400 poles to a
79 gum and white oak, thence N. 35 7890 poles to a sugar corner of Henry Banks survey, thence with 3 of said Banks lines 366 W 3200 poles to a sugar N 69 W 1700 poles to a sugar N 24 W 800 poles to a red oak corner to said Holmes Gale & Harness thence with two of their lines N 42 W 224 to a red oak standing on the bank of Gauly river about 3 poles above the Widow Sawyers fence chestnut pointers. Thence N 60 W 116 poles crossing the mouth of said run to the place of beg-ning containing 100,000 acres after the reduction of 37,052 acres of prior claims it being the same tract of land which was surveyed for Col. Wm. McClay on the 23d April 1795 the same having been conveyed as appears by sundry deeds and conveyances to De Flury Viscount Clifford of France as found upon record in said county of Webster and being the same tract which A. Rader then sheriff of the county of Webster aforesaid did agreeably to the laws of the State of West Virginia on the 26th day of September 1871 sell at public outcry for the non-payment of taxes aforesaid against the said tract in the name of De Flury Viscount Clifford for the year 1870 and previous years. Also the undivided sixth part of that certain mes-uage and tract of land lying and being on Williams river in the counties of Webster and Pocahontas State of West Virginia bounded and described as follows to wit: Beginning at a beach corner to the line of White and Drouthard and running thence S 44 E 2120 poles to two sugar trees N 35 E 520 poles to a sugar thence N 20 E 1060 poles to two
80 sugar trees thence N 85 E 1560 poles to a maple thence N 28 E 1700 poles to a sugar tree said Chambers corner thence with his lines N 80 W 980 poles said Chambers corner thence S 65 W 3960 poles to the beginning containing 30000 acres after the deduction of 5796 acres prior claims. It being the same tract of land that was surveyed for William Budjer on the 10 day of August A D 1795. And being the same tract which A Rader the sheriff of Webster county aforesaid did agreeable to the laws of the State of West Virginia on the 26*d* day of September 1871 sell by public outcry for the non-payment of the taxes assessed against said tract for

the year 1870 and prior years the said Benjamin Rich and Thornton Conrow becoming the purchasers thereof of both the aforesaid tracts and subsequently James Woodzell then recorder of Webster county aforesaid by his deed bearing date the 3d day of October A D 1872 and recorded in Deed Book 2 pages 290 & 291 of the records of said office did for the consideration therein mentioned the said tracts not having been redeemed agreeable to the laws of West Virginia did grant and convey to the said Benjamin Rich and Thornton Conrow their heirs and assigns forever together with all and singular the ways waters water courses rights liberties privileges hereditaments and appurtanances whatsoever thereunto belonging or in any way appertaining and the reversions and remainders rents issues and profits thereof. And all the estate right
81 *right* title and interest property claim and demand whatsoever of him the said Thornton Conrow in law equity or otherwise howsoever of in and to the same and every part thereof To have and to hold the said one undivided sixth part of each of the within described messu-ges tenements and tracts of land hereditaments and premises hereby granted or mentioned and intended so to be with the appurtanances unto the said Walter Wood his heirs and assigns to and for their only purpose use and behoof of the said heirs and assigns forever. And the said Thornton Conrow his heirs executors and administrators does by these presents covenant grant and agree to and with the said Walter Wood his heirs and assigns that they the said Thornton Conrow his heirs all and singular the hereditaments and premises hereinabove described and granted or mentioned and intended so to be with the appurtanances unto the said Walter Wood his heirs and assigns against him the said Thornton Conrow his heirs. And against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by from or under him shall and will warrant and forever defend.

In witness whereof the said parties to these presents have hereunto interchangeable set their hands and seals dated the day & year first above written.

THORNTON CONROW. [SEAL.]

82 Sealed and witnessed in the presence of us

HENRY R EDMONDS
W H CONROW.

Received the day of the date of the within or foregoing indenture of the within-named Walter Wood the purchase-money in full.

THORNTON CONROW.

Witness- at signing:

HENRY R. EDMONDS.
W. A. CONROW.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

On the first day of March, A. D. 1879, before me, a notary public for the Commonwealth of Pennsylvania, residing in Philadelphia, personally appeared the above-named Thornton Conrow, whose name is signed to the within writing, bearing date on the 1st day of March, A. D. 1879, and in *the firm* of law acknowledged the above indenture to be his act and deed and desired that the same might be recorded as such.

Witness my hand and official seal the day and year
[SEAL.] aforesaid.

HENRY R. EDMONDS,
Notary Public.

WEBSTER COUNTY COURT,
CLERK'S OFFICE *April* 10, 1879.

This deed, with the certificate of acknowledgment to it annexed, was this day admitted to record in this office.

Test: B. P. CONRAD, *Clerk.*

83 EXHIBIT "N" OF PLAINTIFF'S BILL.

Benjamin Rich & Wife
to
D. S. Robinson. } Trust Deed.

This deed made this 30th day of Oct A D 1879 between Benjamin Rich of the county of Centre and State of Pennsylvania and Martha Jane his wife of the one part, and D S Robinson cashier of the other part. Witnesseth, that the said Benjamin Rich and Martha Jane his wife doth grant unto the said D S Robinson cashier the following property to wit: All that undivided one-third part of all that certain tract or parcel of land lying on Gauly Williams Cherry and Cranberry rivers in the county of Webster and State of West Virginia

Beginning at a birch a corner of lands of Holmes Gale and Harness, which said tree stands on a small rise about 40 poles from the mouth of a small run that puts into Gauly river about 1030 poles from a hickory corner at Fork lick running thence with said Holmes Gale & Harness line S 35 W 5020 poles crossing said river five times to a poplar thence S 55 E 4000 poles to a gum and white oak, thence N 35 E 7890 poles to a sugar corner of Henry Banks' survey, thence with 3 of said Banks' lines S 66 W 3200 poles to a sugar. N 69 W 1700 poles to a sugar N 24 W 800 poles to a red oak corner to said Holmes Gale & Harness thence with 2 of their
lines S 4 W 224 poles to a red oak standing on the bank of
84 Gauly river about 3 poles above the *the* Widow Sawyer's fence.
Chestnut pointers there. Thence N 60 W 116 poles crossing the mouth of the aforesaid run to the place of beginning, con-

taining 100,000 acres after the reduction of 37052 acres for prior claims as appears by the report of the surveyor of lands for Webster county and the said tract of land was surveyed for Col Wm McClay on the 23d of April 1795 the same having since been conveyed as appears by sundry deeds and conveyances now upon record in said county of Webster showing that the said land was held in fee simple by De Flury Viscount Clifford but was sold on the 24th of September 1869 in the name of Wm McClay for the non-payment of taxes thereon for the — 1868 and previous years and purchased by Benjamin Rich and the said conveyed to the said Rich and Thornton Conrow by deed bearing date September 28th 1870. The said tract of land was surveyed on the 23d day of April 1795 by Edward Jackson surveyor of Randolph county Virginia and of record in said county in Surveyor's Book No 1 page 147 but now in the new county of Webster West Virginia (being the same tract or parcel of land which James Woodzell recorder of the county of Webster and State of West Virginia by deed bearing date the 3d day of October A D 1872, and recorded in said county in Deed Book No 2 page 281 granted and conveyed unto the said Benjamin Rich and Thornton Conrow in fee. In trust to secure a debt due from the said Benjamin Rich amounting
85 to three thousand two hundred and ten dollars evidenced by the following note to wit: One note of $3210 due and payable in seven months from the date hereof said note bearing even date herewith drawn by Benjamin Rich to the order of Benjamin Rich payable at the banking-house of R K Jamison & Co Philadelphia and interest, for the payment of said note or renewals thereof and in trust further, that is case the said note or renewal thereof shall not be paid and fully satisfied at maturity then the whole principal and interest of said indebtedness evidenced by said note or any renewals thereof shall forthwith at the option of said D S Robinson cashier and his successors legal representatives and assigns become due and payable and the said trustee shall upon written notice to them by any of said parties their executors administrators and assigns advertise the said premises hereby conveyed to be sold giving thirty days' notice to the said Benjamin Rich or his legal representatives and also by public advertisement in one or more newspapers of vicinity of said above-described premises, and shall sell the same at public vendue to the highest bidder and upon payment of purchase-money shall convey the same to the purchaser or such person as he may designate. And the trustee shall thereupon appropriate the proceeds of said sale, first to the payment of the costs and charges of said sale, and second to the pay-
86 ment of the principal and interest of the said note above set forth and recited. And if any balance shall remain thereafter the said trustee shall pay the same to said Benjamin Rich his executors administrators and assigns. And the said sale and conveyance by the trustee as aforesaid shall be final and binding on all the parties hereto. And the purchaser shall not be held responsible to look to the application of the purchase-money.

In testimony whereof witness the hands and seals of the said grantees the day and year first above written.

BENJAMIN RICH [SEAL]
MARTHA JANE RICH [SEAL]

Witness
W H RIDGEWAY
B R CROOSDALE
JOHN C HICKLIN
CHARLES GUEST

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

I, Francis C. Fallow, a commissioner appointed by the governor of the State of West Virginia for the said State, residing in the city of Philadelphia, do certify that Benjamin Rich, whose name is signed to the writing above, bearing date on the 30 day of October, 1879, has this day acknowledged the same before me.

Given under my hand and official seal this 30th day of October, 1879.

[COM'R S.] FRANCIS C. FALLOW,
Commissioner for West Virginia in Pennsylvania.

87 STATE OF PENNSYLVANIA, } ss:
County of Centre, }

I, Wm. H. Smith, a justice of the peace in the burough of Minersville, in said county, do certify that Martha Jane, the wife of Benjamin Rich, whose name is signed to the writing above, bearing date the 31st day of October, 1879, personally appeared before me in the county aforesaid, and, being examined by me privily and apart from her husband and having the said writing ful-y explained to her, she, the said Martha Jane, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not now wish to retract it.

Given under my hand and official seal this 31st day of October, 1879.

WM. H. SMITH, *J. P.* [SEAL.]

STATE OF PENNSYLVANIA, }
Centre County. }

I, J. C. Harper, prothonotary of the court of common pleas in and for the county of Centre and State aforesaid (the said court being a court of record), do hereby certify that Wm. H. Smith, Esq., before whom the foregoing acknowledgment was taken, was at the date thereof and now is a justice of the peace in and for the said county, duly commissioned and qualified as such; that he has authority under the laws of the State of Pennsylvania to take acknowl-
88 edgements, and that the signature of *of* the said Wm. H. Smith to the foregoing acknowledgement is his genuine signature.

Given under my hand and the seal of said court, at Bellefonte, this 31st day of October, A. D. 1879.

J. C. HARPER,
Prothonotary.

WEBSTER COUNTY, CLERK'S OFFICE,
November 20, 1879.

The foregoing trust deed from Benjamin Rich and Martha Jane Rich to D. S. Robinson, together with the certificate of acknowledgments thereto annexed, was this day admitted to record in this office.

Teste: B. P. CONRAD, *Clerk.*

A copy from the records.

B. P. CONRAD, *Clerk.*

Copy.
Teste: L. B. DELLIEKER, *Clerk.*

89 EXHIBIT "O" OF PLAINTIFF'S BILL.

Joseph A. Thompson and James Woodzell, Special Com's, to Walter Woods, Trustee, &c. } Deed.

This deed made this 17th day of November in the year 1879, between Joseph A Thompson and James Woodzell special commissioners of the first part, and Walter Wood trustee for himself and Richard Wood Edward R Wood, George Wood and Randolph Wood of the second part. Whereas the said commissioners in pursuance of the authority vested in them by a decree of the circuit court of the county of Webster and State of West Virginia made on the 1st day of June 1878 in a suit in chancery therein pending in which Walter Wood was plaintiff and Ferdinand F Sharp and others were defendants did sell the real estate hereinafter mentioned and conveyed according to the terms and conditions required by said decree at which sale the said Walter Wood trustee as aforesaid became the purchaser for the sum of $3500 and the said court having by a subsequent decree made in the case on the 12th day of September 1879, confirmed said sale and directed a deed for said real estate to be made to the said Walter Wood trustee as aforesaid by the said commissioners upon the payment of all the costs printers' bills for advertising commissions &c all of which have been paid to said commissioners. Now therefore this deed witnesseth that the said Joseph A Thompson and James Woodzell special commissioners as aforesaid have this day granted and conveyed unto the said
90 Walter Wood trustee for himself and Edward Wood Richard Wood George Wood and Randolph Wood the following real estate

The certain one-sixth undivided title or interest to the lands mentioned and conveyed by an indenture of mortgage executed by the

said Ferdinand F Sharp to the said Walter Wood trustee as aforesaid on the 15th day of May 1872, and recorded in the clerk's office of the county court of Webster county West Virginia in Deed Book No 2 page 164, which said lands lie in Webster county West Virginia and consist of three tracts, the first of which contains 100000 acres and is generally known as the "McCleay tract" the second of which contains 105,000 acres and is known as the "Welsh tract" the third and last tract contains 12500 acres and is known as the "George Messingbird tract" All of which lands were conveyed to Benjamin Rich and Thornton Conrow by James Woodzell recorder of Webster county and one undivided third thereof was by said Rich and Conrow and there respective wives conveyed to Ferdinand F Sharp and one-half of his interest or one undivided sixth part of the whole by the said Ferdinand F Sharp conveyed as aforesaid to Walter Wood trustee as aforesaid. Which one-sixth part is hereby conveyed, to have and to hold the said real estate and premises with all the right and interest of the said Ferdinand F Sharp unto the said Walter Wood trustee for himself Richard Wood Edward R Wood George Wood and Randolph Wood their heirs and assigns forever.

91 Witness the following signatures and seals

JOSEPH A THOMPSON [SEAL]
JAMES WOODZELL [SEAL]
Special Commissioners

STATE OF WEST VIRGINIA, *Webster County,* } *ss:*

I, Ballard P. Conrad, clerk of the county court of Webster county, do certify that Joseph A. Thompson and James Goodzell, special commissioners, whose names are signed to the foregoing writing, bearing date on the 17th day of November, 1879, have this day acknowledged the same before me in my said office.

Given under my hand this 17th day of November, 1879.

BALLARD P. CONRAD,
Clerk Webster County Court.

WEBSTER COUNTY COURT,
CLERK'S OFFICE, *November 17th,* 1879.

The foregoing deed from Joseph A. Thompson and James Woodzell, special commissioners, to Walter Wood, trustee, &c., together with the certificate of acknowledgement thereto annexed, was this day admitted to record in this office.

Teste: B. P. CONRAD, *Clerk.*

A copy from the records.
Teste: B. P. CONRAD, *Clerk.*

Aug. 9, 1881.

Copy.
Teste: L. B. DELLIEKER, *Clerk.*

92 Afterwards, to wit, at rules held in the clerk's office of the said court on the first Monday in the month of December, 1881, the following order was entered upon the rule docket by the said clerk, to wit:

"The order of publication awarded at Sept. rules, 1881, perfected and affidavits of publication thereof filed. Alias summons awarded *vs.* def'ts Jesse Hammons and A. H. Cogar to 1st Monday in January, 1882, and cause continued."

Which affidavits of publication of the said order *is* in the words and figures following, to wit:

STATE OF WEST VIRGINIA, *Nicholas County,* } *To wit:*

I, Howard Templeton, editor of the Nicholas Chronicle, a newspaper published in said county, do certify that the notice hereto annexed was published once a week for four successive weeks, commencing on the 6th day of October, 1881, in the paper aforesaid.

HOWARD TEMPLETON.

Printer's fee, $10.00.

Sworn to and subscribed before me this 1st day of November, 1881, in the county aforesaid.

JNO. H. H. DUFFY,
Notary Public.

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, B. C. Conrad, clerk of the circuit court of said county, do solemnly swear that a copy of within order of publication in the ch'y cause of Allen T. Caperton's Heirs *vs.* Benjamin Rich, &c., was duly posted at the front door of the court-house of said county at the time of the entry thereof at rules.

B. C. CONRAD.

Sworn to and subscribed before me, in the county afore-
93 said, this 30th day of November, 1881.

B. P. CONRAD, *Not. Pub.*

Said alias summons — in the words and figures following, to wit:

"The State of West Virginia to the sheriff of Webster county, Greeting:

We command you, as heretofore we have commanded you, that you summon Jesse Hammons and Adonijah H. Cogar to appear before the judge of the circuit court of Webster county, at the court-house thereof, at rules to be held in the clerk's office of the circuit court of Webster county on the first Monday in January next, to answer a bill in chancery exhibited against them and others in our said court by Tamlin Braxton and Mary E., his wife; William A. Gordon and Harrietta C., his wife; E. J. Caperton, James F. Patton

and Malinda C., his wife; Allen Caperton, Robert Stiles and Lelia C., his wife, and Ella Caperton. And have then there this writ.

Witness B. C. Conrad, clerk of our said court, at the court-house of the said county of Webster, this 5th day of December, 1881, and of the State the 19th.

B. C. CONRAD."

Officer's Return, to wit.

"Served on within-named Jesse Hammons by delivering an office copy thereof to — Hammons, wife of within-named Jesse Hammons, she being found at his usual place of abode, and by reading and explaining the purport of said summons to her, and served on within-named Adonijah H. Cogar by posting an office copy thereof on the front door of his house on the 28th day of December, 1881, no person being then there found.

H. W. RADER, *S., W. C.*"

94 Afterwards, to wit, at rules held in the clerk's office of the said — on the 1st Monday in January, 1882, the following order was entered upon the rule docket of the said court, to wit:

"The alias summons *vs.* Jesse Hammons and A. H. Cogar awarded at Dec. rules last returned executed and decree *nisi vs.* them, and cause set for hearing."

And at a regular term of the said circuit court of Webster county, at the court-house thereof, on Monday, the third day of April, 1882, defendants Andrew Wayne, Thomas Moyers, Jesse Hammons, and Adonijah Cogar, by leave of the court, filed their joint answer to the pl't'fts' bill; which said joint answer is in the words and figures following, to wit:

To the honorable judge of the circuit court of Webster county.

The joint answer of Andrew Wayne, Thomas Myers, Jesse Hammons, and Adonijah Cogar to the bill of complaint exhibited in this honorable court against them and Benjamin Rich and others by Tamlin Braxton and Mary E., his wife; William A. Gordon and Harrietta C., his wife; E. J. Caperton, Jas. F. Patton and Malinda C., his wife; Allen Caperton, Robert Stiles and Lelia, his wife, and Ella Caperton.

These respondents for answer say that they have no personal knowledge of any of the matters and things alleged in the 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, and 19 clauses of said bill, and can therefore neither admit nor deny them.

That they have no interest in the lands in controversy in this bill, which will not depend wholly on the right and title of their codefendants' interest, and whose duty it is to defend said suit and upon whose defense these respondents rely for the protection of their interests, and to whatever decree may result from their defense these

respondents will submit; and, having answered, pray to be
95 dismissed with their costs, &c.

ANDREW WAYNE,
THOMAS MYERS,
JESSE HAMMONS,
ADONIJAH COGAR,
By Counsel.

Webster County Circuit Court, April Term, Held April 3rd, 1882.

The defendants Edward and Walter Wood this day filed a petition in the words and figures following, to wit:

To the circuit court of Webster county, in the State of West Virginia:

Your petitioners, Edward Wood and Walter Wood, respectfully respresent that there is pending in said court a controversy and suit of a civil nature between Tamlin Braxton and Mary E., his wife; William A. Gordon and Harrietta C., his wife; E. J. Caperton, James F. Patton and Malinda C., his wife; Allen Caperton, Robert Stiles and Lelia C., his wife, and Ella Caperton, as plaintiffs, who are now and were at the institution of the said suit citizens of the State of West Virginia, and Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Randolph Wood, Ferdinand F. Sharp, D. S. Robinson, who are now and were, except in the case of Randolph Wood, as will more fully appear, at the time of the institution of the said suit citizens of the State of Pennsylvania, in which said suit the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the controversy therein is wholly between citizens of different States and which can be fully determined between them.

Your petitioners further represent that Randolph Wood, who is named as a party defendant in the bill of complaint filed in
96 said suit, is now and was for a long time prior to the institution of the said suit deceased, and was at the time of his decease a citizen of the State of Pennsylvania.

Your petitioners further represent that Andrew Wayne, Thomas Meyers, Jesse Hammons, and Adonijah H. Cogar, who are named in the said bill of complaint as parties defendant, are not necessary as indispensable parties to the determination of the controversy between said plaintiffs and Benjamin Wood, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Ferdinand F. Sharp, and D. S. Robinson.

Your petitioners have made and herewith file a bond with good and sufficient surety for their entering in the circuit court of the United States for the district of West Virginia, on the first day of its next session, a copy of the record in the said suit, and for paying all costs that may be awarded by the said circuit court of the United States if said court shall hold that said suit shall have wrongfully or improperly removed thereto. Your petitioners therefore pray

that this honorable court will accept said bond and surety and proceed no further in said suit.

EDWARD R. WOOD.
WALTER WOOD.

Walter Wood, being duly affirmed according to law, doth depose and say that he is one of the petitioners above named, and that the statements contained in the said petition are just and true, as he verily believes.

WALTER WOOD.

Affirmed and subscribed before me this twenty-fourth day of March, A. D. 1882.

[NOTARIAL SEAL.] DANIEL HOLSMAN,
Notary Public.

97 *Bond, to wit.*

Know all men by these presents that we, Edward R. Wood and Walter Wood, as principals, and H. P. Kremer and John R. Boggess, as surety, are held and firmly bound unto Tamlin Braxton and Mary E., his wife; Wm. A. Gordon and Harrietta C., his wife; E. J. Caperton, James F. Patton and Malinda C., his wife, and Ella Caperton in the penal sum of two hundred and fifty dollars; the payment whereof, well and truly to be made unto the said Tamlin Braxton and Mary E., his wife; Wm. A. Gordon and Harrietta C., his wife; E. J. Caperton, James F. Patton and Malinda C., his wife; Allen Caperton, Robert Stiles and Lelia, his wife, and Ella Caperton, their representatives and assigns, we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents.

Sealed with our seals this 24th day of March, 1882.

The condition of the above obligation is such that whereas Edward R. Wood and Walter Wood have filed their petition in the circuit court of Webster county, West Virginia, praying for the removal into the circuit court of the United States for the district of West Virginia — a certain suit wherein the above-named obligees are plaintiffs and the said petitioners and Benjamin Rich, Thornton Conrow, Abram Waltman, Richard Wood, Randolph Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Meyers, Jesse Hammons, and Adonijah H. Cogar are defendants: Now, if the above-named petitioners shall enter in the said circuit court of the United States for the district of West Virginia on the first day of its next session a copy of the record of said suit, and shall pay all costs that may be awarded by the said last-named circuit court if said court shall hold that said suit was improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

Witness:
THOMAS A. PERRATT.
B. A. KNIGHT, Witness
CHAS. S. JENKS. for
EDWARD LIPPINCOTT.
J. F. KEATOR.

EDWARD R. WOOD. [L. S.]
WALTER WOOD. [L. S.]
H. P. KREMER. [L. S.]
JOHN R. BOGGESS. [L. S.]

98 STATE OF WEST VIRGINIA:

In the Circuit Court of Webster County, at a Term Thereof Held on the 3rd Day of April, 1882.

A. T. CAPERTON'S HEIRS *et als.* *vs.* BENJ. RICH *et als.* } In Chancery.

The defendants Andrew Wayne, Thomas Moyers, Jesse Hammons, and Adonijah Cogar this day, by leave of the court, filed their joint answer, and leave is reserved to the plaintiffs hereafter to move to reject the same or reply thereto.

And the defendants Edward R. Wood and Walter Wood this day presented their petition, praying the removal of this cause into the circuit court of the United States for the district of West Virginia, which petition is verified by affidavit and accompanied by the bond of Edward R. Wood, Walter Wood, H. P. Kreamer, and John R. Boggess, payable to Tamlin Braxton and others, plaintiffs herein, in the penalty of $250, conditioned according to law, and, the execution of said bond by the obligors therein having been proven, the same is received by the court and ordered to be filed in this cause; and thereupon it is ordered that all further proceedings here in this cause stop and that this cause be removed hence into the circuit court of the United States for the district of West Virginia to be holden at Parkersburg, therein to be heard and determined.

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, B. C. Conrad, clerk of the circuit court of said county of Webster and State aforesaid, do hereby certify that the foregoing is a correct and true copy of all the papers exhibited and filed in the said court in the chancery cause of Tamlin Braxton and others, heirs of Allen T. Caperton, deceased, *vs.* Benjamin Rich and others, including copies of all process issued therein, orders entered at rules, and of all orders entered of record in said cause as shown by the records of said court.

99

Given under my hand and the official seal of the said court this 29th day of May, 1882.

[COURT SEAL.]

B. C. CONRAD, *Clerk.*

Plaintiff's costs, to wit---	$48 52
Docket fee ----------	15 00
	$63 52

Defendants' costs, including record, $42.95.
Teste: B. C. CONRAD, *Clerk.*

And on another day, to wit, on the 7th day of October, A. D. 1882, the following order was made and entered of record, to wit:

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others. } In Equity.

On motion of the defendants Benjamin Rich, Richard Wood, Walter Wood, and Edward Wood, and Burtis Barber, executor of Thornton Conrow, deceased, they have leave to file their answer to complainants' bill within sixty days.

The answer referred to in the foregoing order is in words and figures as follows, to wit:

100 To the honorable judges of the circuit court of the United States for the district of West Virginia:

The separate answer of Benjamin Rich to a bill exhibited against him and others in this honorable court by Tamlin Braxton and his wife and others.

This respondent, protesting against the sufficiency of the said bill, in nowise admitting the same for answer, nevertheless, to so much and such parts thereof as he is advised it is necessary for him to make answer unto, answereth and saith:

First. That he does not know at what time Allen T. Caperton departed this life nor whether he died intestate or what children he left surviving him. He admits that said Caperton died some time during the year 1876.

Second. That he does not know of the several grants or any of them referred to in the second clause of said bill, and cannot admit anything in said second clause alleged in reference to them nor whether they lie in Greenbrier, Nicholas, and Webster counties.

Third. Your respondent has no knowledge of any of the matters and things stated and alleged — the third clause of the said bill and cannot admit or deny them.

Fourth. Respondent has no personal knowledge whether the taxes have been paid on said lands by either the said Caperton or
101 his heirs nor does he know whether any or what taxes were charged on said lands to said Caperton or those under whom he claims; he cannot, therefore, admit that either the said Caperton or his children have paid all the taxes charged against said lands up to and including the year 1880, and objects to reading of either of the Exhibits "A" or "B," as evidence of such payment, as insufficient and imper- for any such purpose and requires full proof thereof.

Fifth. Respondent cannot admit nor deny the truth of the allegations set forth in the fifth clause of said bill, because he is without knowledge of their truth; therefore calls for proof of them, as well as to all others not admitted in this answer.

Sixth. In answer to the sixth clause of said bill respondent denies that there is any truth or color of truth in anything which relates to him in connection with G. P. Shreeve or Albert Owen. In the year 1868 he had never been in Webster county, West Virginia, nor had he any knowledge of or acquaintance with said Shreeve or

Owen nor of the lands lying in said county or the owners or claimants thereof. He neither had *no* agency or concern with the entry of the lands referred to on the assessor's book for that year nor did he then nor does he now know who entered or caused the said lands to be entered on said book. Respondent had no authority to enter them thereon and never pretended to have, nor was he associated with any one who did pretend to have such authority or who attempted to exercise such authority. Except the one allega-
102 tion in this clause of the bill that respondent had no authority from Banks or McClary to enter said lands on the assessor's books the whole is utterly false, so far as any act of his is alledged and of others associated with him. Of the other allegations *allegations* he has no knowledge, and for that reason cannot say whether they are true or false. Respondent has been informed since the institution of this suit that the entry of the 58,500 acres in the name of Henry Banks on the assessor's books was directed by the representative of Henry O. Middleton, deceased, who claimed that said Middleton had in his lifetime acquired the title to said land in some way derived from said Banks.

Seventh. Respondent says that, having had no knowledge nor information in relation to these lands until a few days before the sale thereof by the sheriff, in 1869, it was not and could not have been any part of his plan to allow these lands to become delinquent for the year 1868. It is not true that at *at* the sale of these lands by the sheriff in 1869 they were purchased *they were purchased* by him jointly with said Shreeve and Owen. He alone became the purchaser of the McClary tract of 100,000 acres and took a receipt from the sheriff therefor in his own name, and he, jointly with said Shreeve and Owen, purchased the Banks tract of 58,500 acres and
103 took a receipt therefor from the sheriff as such joint purchasers. Owen and Shreeve afterwards assigned their interests therein to him. He knows nothing of the report of the sheriff in relation to said sale, but the facts are as herein stated. Whether the report was or was not returned and recorded within twenty days of the sale he does not know; and if for any purpose such failure can become in any way material he calls for full proof.

Eighth. Respondent, in answer to the seventh clause of the bill, has shown how Shreeve and Owen parted with their interest in the 68,500-acre tract, but the allegation that they were "mere instruments or tools" in any act of theirs or his in connection with the purchase of the land or the assignments by which respondent became the sole owner of the tract is, so far as he knows or has been informed or believes, *is* wholly false, and the charge, he believes, was made without any belief in its truth by the plaintiffs or any of them. Respondent purchased the interest of said Shreeve and Owen at the price of six thousand dollars.

The said Thornton Conrow never had any interest in the said Banks tract.

In relation to the said 100,000-acre tract the said Shreeve and Owen never had any interest, directly nor indirectly. It was purchased by respondent alone and for his sole benefit. Afterwards he

assigned to said Conrow an undivided half thereof, and deeds
104 were thereafter executed by the recorder of said county of Webster—the 100,000 acre- to respondent and said Conrow jointly and the 58,500 acres to respondent alone.

Ninth. Respondent admits that in the year 1870 at the time he obtained his deed for the 100,000-acre tract, sold in 1869, he was in Webster county, and he discovered a deed on record in said county which appeared to have conveyed the McClary title to said land to Viscount Clifford De Fleury, and dated the sixteenth day of November, 1868, and that afterwards, in the year 1871, this land was again sold by the sheriff of Webster county as delinquent for the year 1870, and the said tract of said land was at said sale purchased by your respondent for himself and said Conrow, and afterwards, when the time for its redemption had expired without such redemption having been made, he obtained a deed therefor from the recorder of said county according to law, but it is utterly false that respondent and said Conrow or either of them procured in any way, directly or indirectly, the sheriff of said county to make any report of sale of said land or to do any other act in relation thereto *either* or further than to pay to him the purchase-money which they bid for said land at the public sale thereof and took his receipt therefor.

Respondent does not know whether the said sheriff ever did
105 make a report of said sale, but supposes he did do as the law requires and as was his duty in relation thereto.

Respondent, from information, believes that the said last-named tract of land was charged on the assessor's books of said county in the name of the said De Fleury, and for that year returned delinquent, and so here charges and denies the allegation in said ninth clause of the bill to the contrary and each and every imputation of fraud on the part of said Conrow or himself or said sheriff in relation thereto.

Tenth. Respondent admits that the surveyor did make a report of said land and the recorder did execute a deed therefor based on said last sales, as was their duty as public officers to do, but without any improper or fraudulent purposes, thought, or act of respondent or Conrow.

Eleventh. Respondent admits that a deed of the import as stated in the eleventh clause of the bill was made.

Twelfth. Respondent admits that *that* a deed was made by him and his wife to Abraham Waltman for an undivided part of the 58,500-acre tract, but he does not remember the date of the deed nor extent of the interest, but since then and before the institution of this suit the said Waltman, by deed duly executed and recorded in Webster county, reconveyed the said interest of said land
106 to respondent.

Thirteenth. Respondent admits the conveyance alluded to in the thirteenth clause of the bill.

Fourteenth. Respondent admits the conveyance alluded to in the fourteenth clause of the bill.

Fifteenth. Respondent has no personal knowledge of the convey-

ance referred to in the fifteenth clause of the bill, but from information believes and admits such conveyance to have been made.

Sixteenth. Respondent says it is not true that the defendants have not attempted to take actual possession of the said lands until within the last year by themselves or their tenants or made actual claim thereto; on the contrary, actual possession was taken of both said tracts of land soon after the deeds were obtained therefor from the recorder, and has been continuously maintained ever since — now for ten years at least, and that with claim of title thereto.

Respondent admits that defendants Wayne, Myers, Cogar, and Hammons are among those who are in possession, but he does not know that they or either of them have said or admitted to the plaintiffs in reference to the payment of purchase-money or the title of respondent and others claiming title jointly with him;
107 they have not given him nor, so far as he knows, to any of his co-tenants in the ownership of said lands notice of their abandonment of their possession and claim of title under them. It is not true that respondent made any false or fraudulent statements to either of tenants named to induce them or either of them to purchase or lease any part of said land, and neither of them has ever made complaints thereof to respondent.

Seventeenth. Respondent believes it to be true that the said 100,000 acres and the 58,500 acres are situated in the counties of Greenbrier, Webster, and Nicholas, but he does not know whether they cover and include within their boundaries any part of said lands claimed by the plaintiffs, nor does he know whether the land sold to Andrew Wayne or the lands leased to Cogar or Hammons are within the lands claimed by the plaintiffs, but they are not part of them in any sense. They may conflict, for aught this respondent knows, but, whilst he cannot deny it, he does not admit it, but requires proof.

Eighteenth. Respondent denies that all or any of the deeds—Exhibits G, H, I, J, K, L, M, N, & O—are inoperative and void for any of the reasons stated and alleged in said eighteenth clause of said bill or for any other reasons stated in said bill or otherwise,
108 nor are any of the facts stated in said clause as the several reasons for the plaintiffs' belief or opinion that either of said deeds are inoperative and void true further than hereinbefore answered and admitted.

The whole argument of the plaintiffs in this clause of the bill is as unsound and untrue as the authorities they cite in support of it are irrelevant and variant from the positions taken therein.

Nineteenth. Respondent is willing to admit that plaintiffs are desirous of selling their lands, and respondent is further willing to admit that if the lands of the plaintiff claimed in said bill are situated within the said lands claimed by this respondent this fact would hinder and obstruct the sale by them, for thus being covered by a good and valid title in actual possession obtained and held in good faith purchasers could not be readily found to exchange their money for the title set up by the plaintiffs.

It would, however, be different if the title- of the defendants are

such as the plaintiffs characterize it, "inoperative, null, and void," and that the title of said Caperton "was regarded by all persons and was in fact and still is indisputable." Under these circum-
109 stances it is not easily understood how plaintiffs' title could be so disquieted and clouded as to render it impossible to sell them without great sacrifice.

Respondent denies all fraud or fraudulent combination alledged in said bill, and, having fully answered, prays that he may be hence dismissed with his reasonable costs.

(Signed) BENJAMIN RICH.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

Before me, the undersigned, personally appeared Benjamin Rich, the defendant hereinbefore named, who, being duly affirmed according to law, doth depose and say that the statements contained in the foregoing answer are just and true.

(Signed) BENJAMIN RICH.

Subscribed and affirmed to before me this 5th day of October, A. D. 1882.

(Signed) SAMUEL BELL,
[SEAL.] *U. S. Com'r.*

110 And on another day, to wit, on the 12th day of April, 1883, the following amended and supplemental bill of complaint was filed in the clerk's office of said court:

111 The amended and supplemental bill of complaint of Tomlin Braxton and Mary E., his wife; William A. Gordon and Harietta C., his wife; Malinda C. Patton, Robert Stiles and Lelia C., his wife; E. J. Caperton, Allen Caperton, and Ella Caperton, plaintiffs, against Benjamin Rich, Thornton Conrow, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Randolph Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Myers, Jessie Hammons, and Adonijah H. Cogar, defendants, filed in the circuit court of the United States in & for the district of West Virginia, sitting at Parkersburg, in said district, by leave of said court.

To the honorable the judge of said court:

The above-named plaintiffs complain & say that heretofore, to wit, at the September rules, 1881, they, together with James F. Patton, who has since died, filed their original bill in this cause against the said defendants in the circuit court in & for the county of Webster, West Virginia, and that afterwards this cause was removed by the defendants in pursuance of the act of Congress in such case made and provided into your honor's court to be tried and determined, where it is now pending; that since said removal the said plaintiff James F. Patton, the husband of the plaintiff

Malinda C. Patton, has departed this life, but, inasmuch as
112 he was only a nominal party and had no personal interest in the subject-matter of this suit, it is not deemed necessary to have the same revived in the name of his heirs or personal representatives; and these plaintiffs now, by way of amended & supplemental bill, complain and say as follows:

That in the month of July, 1876, the Hon. Allen T. Caperton, then a Senator of the United States, departed this life intestate, seized and possessed of a large & valuable real estate, and leaving the plaintiffs Mary E. Braxton, Harrietta C. Gordon, Malinda C. Patton, Lelia C. Stiles, E. J. Caperton, Allen Caperton, and Ella Caperton, his only children and heirs-at-law, him surviving.

The said Caperton derived his title to the real estate which is the subject of this suit as follows: On the 25th day of March, 1795, the Commonwealth of Virginia granted to Robert Morris 153,900 acres of land situate in the then county of Greenbrier, Virginia, but now in the counties of Greenbrier, Nicholas, & Webster, in West Virginia, a copy of which grant is herewith filed as part of this bill, marked "No. 34;" that on the 13th day of March, 1797, the said Robert Morris and wife, by deed duly acknowledged and recorded, conveyed the said 153,900 acres, together with the other lands therein mentioned, to William Crammond, a copy of which
113 deed is herewith filed as part of this bill, marked "No. 35."

That on the 28th day of October, 1814, the said William Crammond and wife, by deed duly executed and recorded, conveyed all the lands conveyed to said Crammond by said deed from Robert Morris and wife to Thomas Astley; a copy of which deed is herewith filed as part of this bill, marked "No. 36."

That on the 10th day of December, 1840, Littleton Kirkpatrick and Sophia, his wife, said Sophia being the only child and heir-at-law of said Thomas Astley, who had died intestate, and Sarah H. Astley, the widow of said Thomas Astley, dec'd, by deed duly recorded conveyed the same lands so conveyed to said Thomas Astley as aforesaid to Henry Crammond; a copy of which deed is herewith filed as part of this bill, marked "No. 37."

That on the 21st of December, 1842, the said Henry Crammond, by deed duly recorded, conveyed to John Williams, of Greenbrier county, Virginia, the whole of the said 153,900 acres so granted to Robert Morris as aforesaid; a copy of which deed is herewith filed as part of this bill, marked "No. 38."

And that on the 21st day of February, 1850, the said John Williams and wife, by deed duly recorded, conveyed 77,104 acres of the said 153,900 acres to the said Allen T. Caperton, and the
114 said Caperton died seized of the same. A copy of said deed is herewith filed as part of this bill, marked "No. 39."

That on the 10th day of March, 1790, the Commonwealth of Virginia granted to Abner Cloud 5,000 acres of land in the then county of Harrison, Virginia, but now in Webster county, West Virginia; a copy of which grant is herewith filed as part of this bill, marked "No. 12."

That the said last-named tract afterwards became forfeited to

the Commonwealth of Virginia and was in due form of law sold by the commissioners of delinquent and forfeited lands for Nicholas county (the said tract then being situate in that county) under a decretal order of the circuit superior court of law and chancery for the said county of Nicholas, made on the 8th day of April, 1841, at which sale the said John Williams, hereinbefore named, became the purchaser, and the sale thereof was afterwards in due form of law confirmed by another decretal order of said court, made on the 9th day of September, 1842. A copy of the said order of sale is found on pages 13 & 14 of the paper herewith filed as Exhibit "No. 1," and a copy of said order confirming said sale to John Williams is found on page 15 of said exhibit; both of which orders are prayed to be taken and read as parts of this bill.

On the 20th day of June, 1843, John Brown, com-
115 missioner of delinquent and forfeited lands for said Nicholas county, by deed duly executed and recorded, conveyed said 5,000 acres of land to the said John Williams; a copy of which deed is herewith filed as part of this bill, marked "No. 17." A copy of the order of the said circuit superior court of law and chancery of Nicholas county appointing the said John Brown commissioner of delinquent and forfeited lands for Nicholas county will be found on pages 2 & 3 of the said Exhibit "No. 1," and the same is prayed to be read as part of this bill; and the said John Williams on the 21st day of February, 1850, by deed duly executed and recorded, conveyed said 5,000 acres of land, among other tracts, to the said Allen T. Caperton, who was seised and possessed thereof at the time of his death. A copy of this deed is herewith filed as part of this bill, marked "No. 21."

That on the 1st day of September, 1851, the Commonwealth of Virginia granted to A. C. and D. B. Layne 2,738 acres of land, situate in the then county of Randolph, in the State of Virginia, but now in the county of Webster, West Virginia; a copy of which grant is herewith filed as part of this bill, marked "No. 29."

That on the 18th day of March, 1856, the said A. C. Layne, by deed duly executed & recorded, conveyed this one undivided
116 half of said tract of land to the said D. B. Layne; a copy of which deed is herewith filed as part of this bill, marked "No. 30;" and on the 12th day of April, 1859, the said Douglass B. Layne & wife, by deed duly executed and recorded, conveyed the whole of said tract of land to the said Allen T. Caperton, and the said Caperton was seised and possessed thereof at the time of his death. A copy of the deed is herewith filed as part of this bill, marked "No. 31."

That on the 1st day of November, 1855, the Commonwealth of Virginia granted to Austin Hollister a tract of 9,330 acres of land, situate in the county of Randolph, in the State of Virginia, but now in the county of Webster, West Virginia; a copy of which grant is herewith filed as part of this bill, marked "No. 25;" and on the 1st day of February, 1858, the said Commonwealth granted to the said Austin Hollister another tract of land of 5,938 acres,

situate as last aforesaid, which grant is herewith filed as part of this bill, marked "No. 26."

And that on the 12th day of February, 1859, the said Austin Hollister and wife, by deed duly executed and recorded, conveyed to the said Allen T. Caperton 9,311 acres of said tract of
117 9,330 acres and the whole of the said tract — 5,938 acres; a copy of which deed is herewith filed as part of this bill, marked "No. 28."

And the said Allen T. Caperton was seised and possessed of said lands so conveyed by said last-named deed at the time of his death.

That the said tracts of 5,000 acres, 2,738 acres, 9,330 acres, and 5,938 acres, situate in the said county of Webster, became forfeited to the State of West Virginia prior to the year 1881 for the non-payment of the taxes thereon, and that on the petition of these plaintiffs as the heirs-at-law of the said Allen T. Caperton, deceased, and upon full proof of their title to said lands and of their right to redeem the same from such forfeiture, these plaintiffs, as such heirs-at-law, were allowed by an order of the circuit court of Webster county made on the 5th day of August, 1881, to and they did redeem all the said tracts from said forfeiture and paid to the proper authorities all the taxes, interest, damages, and costs charged and chargeable on said tracts and each of them up to and including the year 1880, and the same were by the order of said court re-entered and charged
118 upon the land books of the said county for the year 1881 to the said heirs-at-law of Allen T. Caperton, dec'd, who have since paid all the taxes charged and chargeable thereon, and as such heirs-at-law they are and were at the time of the institution of this suit the only true & lawful owners of the said tracts of land and each of them. A copy of the order of the said circuit court of Webster county allowing them to and under which they did so redeem said lands is herewith filed, marked "A," and prayed to be taken and read as part of this bill.

That a part of the 77,104-acre tract conveyed to the said Allen T. Caperton by the said John Williams as aforesaid was sold and conveyed by the said Allen T. Caperton in his lifetime, by reason whereof he owned but 41,171½ acres thereof at the time of his death; that the said 41,171½ acres became forfeited to the State of West Virginia for the non-payment of the taxes thereon prior to the year 1881, and that on the petition of these plaintiffs as the heirs-at-law of the said Allen T. Caperton, deceased, and upon full proof of their title to said lands and of their right to redeem the same from said forfeiture, these plaintiffs, as such heirs-at-law, were by an order of the circuit court of Nicholas county made on the 11th day of August, 1881, allowed to and did redeem the said tract of 41,171½ acres from said forfeiture and paid to the proper authorities all the taxes, interest, damages, & costs charged & chargeable on said tract of land up to and including the year 1880, and said tract was by said order re-entered & charged on the land books of said county of Nicholas
119 for the year 1881 (said lands being mostly situate in that county) to these plaintiffs as such heirs-at-law of said Allen

T. Caperton, dec'd, and these plaintiffs have since paid the taxes charged and chargeable thereon, & are now and were at the time of the commencement of this suit the only true and lawful owners thereof. A copy of the said order is herewith filed, marked " B," and the same is prayed to be taken and read as part of this bill. And these plaintiffs further complain and say that since the filing of their original bill in this cause they have procured other, and they believe more full and accurate, information in regard to the entry of the lands hereinafter named on the land books of Webster county in the names of William McCleery and Henry Banks in the year 1868 than they had at the time of the filing of their said original bill, and therefore they now aver and charge that some time in the year 1867 or early in the year 1868 the said G. P. Shrieve mentioned in said original bill conceived the idea of making a fraudulent entry of the said McCleery and Banks lands on the land books of the said county of Webster for the purpose of having them returned delinquent for the said year for the non-payment of the taxes to be charged thereon for that year, and to be sold therefor at the sale of such lands to be made in the year 1869 and purchased by such person or persons as he could engage with him in such fraudulent scheme for his & their joint benefit; that in order
120 the more effectually to carry out his contemplated fraud the said Shrieve selected and communicated with different parties outside of the State of West Virginia who were unacquainted with the laws of said State in regard to delinquent & forfeited lands therein, and in 1868 he made an agreement with a party of gentlemen living at and near Bellefonte, Pennsylvania, consisting of H. Brockerhoff and others, to purchase said lands at said sale when made as hereinbefore stated, which agreement he obtained by representing to them that the title to said lands so obtained would be good and valid, and they actually paid him several hundred dollars on the said agreement; that in pursuance of his said scheme and of said agreement the said Shrieve did in the year 1868 fraudulently & corruptly cause & procure a tract of land of 100,000 acres, which he claimed had been pattented to William McCleery, and a tract of 58,000 acres, which he claimed had been pattented to Henry Banks by the Commonwealth of Virginia about the year 1796 or '7, to be entered on the land books of said county of Webster and charged with taxes thereon for the year 1868, but for no other years, the first in the name of said William McCleery and the other in the name of the said Henry Banks; that said tracts of land were both returned delinquent for the non-payment of the said taxes so charged thereon for said year, which was in accordance with and in pursuance of the said fraudulent entry and purpose of the said Shrieve hereinbefore stated.

121 That said Shrieve had no interest in or control of the said tracts of land or either of them or any part thereof at or before the said entry thereof on the said land books or at or before the return thereof as delinquent as aforesaid, and he had no authority from any one interested in any portion of said tracts or either of them to cause them to be so entered on said land books, but his

whole action in regard thereto was that of a volunteer and intruder and taken for the fraudulent purpose aforesaid; that said Shrieve, in order the more effectually to carry out his said fraudulent scheme, and not to be dependent alone on the party above referred to, and without their knowledge, also entered into negotiations with the defendant Benjamin Rich, of Pennsylvania, & others of that State to join and aid him in carrying out his said fraudulent enterprise, including the purchase of both said tracts of land for their joint benefit at said tax sale when made, and that to make assurance doubly sure he also had, unknown to all the others, a like agreement with one Dr. Chaney & others, of Baltimore, Maryland; that prior to the tax sale of said lands in 1869 the said Brockerhoff and his associates became fully informed of the fraud & illegality of the said acts, doings, & purposes of said Shrieve in regard to said lands, and refused to proceed any further with said agreement, and compelled Shrieve, as these plaintiffs are informed and believe, to refund the money he fraudulently obtained from them under said agreement.

122 And these plaintiffs, further complaining, say that both of the said tracts of land so entered in the land books of Webster county as aforesaid, even if they had ever been granted by the Commonwealth of Virginia to the said McCleery and Banks or purchased by them from others than the said Commonwealth, all of which they deny, were and had been long before the year 1832 forfeited to the Commonwealth of Virginia for the non-payment of the taxes charged thereon and for the non-entry of said tracts and each of them on the lands books of the proper counties, and were by virtue of the provisions of article 9 of the constitution of the State of West Va. of 1863 and of the statutes of said State transferred to & vested in the State of West Virginia, so far as the title thereto had not vested in others than the said McCleery and Banks prior to the adoption of said constitution; that if the said McCleery and Banks or either of them ever had title to the tract of land so entered in their respective names by pattent or otherwise such title accrued to them many years before the year 1852, and both of them died long before that year, and both of them sold & conveyed to others all of their lands in the State of Virginia before they died; and so these plaintiffs aver and charge that at the time of the said fraudulent entry of the said two tracts of land in the lands books of the said county of Webster in the names of the said McCleery and Banks, both of them being dec'd & having during their lives sold &

123 conveyed to others all their lands in the then State of Virginia, there was not and could not be any one entitled as the heir-at-law of either of them and that a charge of taxes on said land books against said McCleery & Banks on said lands did not & could not operate as a lien thereon as against any person whatever; that neither of the said tracts of land had ever been entered on the land books of Webster or any other county in West Virginia prior to the year 1868, and the only law in force in said State at the time the same were so entered in that year under & by which they could be so entered & charged with taxes in the name of any person was

section 28 of chapter 118 of the Acts of 1863, which section prescribes the whole duty of assessor upon the subject, and under it he was required—

1. To ascertain that these lands were in his district.
2. Who had title by patent or otherwise thereto.
3. That they had not before been entered in his land book, or, if entered, had been omitted therefrom for one or more years.
4. Then to make an entry in the name of the owner.
5. If no assessment of the value of the lands had been made, to make such assessment to the best of his judgment by reference to the assessed value of contiguous lands similarly situated.
6. To charge on the lands so entered when the quantity contained in each tract exceeds 1,000 acres (as these do) taxes at the rate imposed by law for each year in which the said land was not
124 before entered in such book from the year 1832, inclusive, of the patent issued before that time, &c., &c., together with lawful interest on each year's taxes.

This statute was violated in about every one of these particulars in the entry of these two tracts of land in the land books which were materal to a legal & proper entry thereof on said books.

First. They were not entered & charged to the owners thereof.

Second. They were not assessed by the assessor as required — the statute, the said tract of 100,000 acres being valued at eleven cents per acre and the 58,000 acres being assessed at 5 cents per acre, while the lands contiguous to said tracts and similarly situated were at the same time assessed at 50 cents per acre.

Third. The assessor, in plain violation and disregard of the statute, failed to charge the said tracts of land and each of them with the taxes & interest properly chargeable thereon for each of the years from & including the year 1832 to the year 1868, but charged the taxes on said lands for the year 1868 only.

And for these reasons alone these plaintiffs are advised and believe and so charge that the said entry of the said lands on said land books was & is utterly null and void and could not in any way operate to confer or assist in conferring a title upon a purchaser of said lands at a sale thereof for the non-payment of the said taxes
125 so assessed thereon; that for the carrying out of the said fraudulent purposes and designs of the said Shrieve in regard to the said tracts of land, and to enable him & his confederates, the defendants, Benjamin Rich and T. Corrow & one Albert Owen, all & each of whom, as these plaintiffs are informed & believe & so charge, had then become associated with him in his fraudulent enterprise, to purchase the said two tracts of land at the tax sale thereof by the payment of the smallest amount of money possible, fraudulently caused & procured the said tract of 100,000 acres to be left off of the said land books for the years 1869 and 1870, and the said tract of 58,000 acres to be so left off for the years 1869, 1870, and 1871, and the same, by the procurement of the said Shrieve & his confederates, were not nor was either of said tracts entered on said land books of Webster county or of any other county in the name of any person whatever for the years last aforesaid, and no taxes on

said lands for said years or either of them have been paid by the said Rich or by any of his said confederates or by any other person for him or them or claiming under, by, or through him or them; that said tracts of land and each of them, having been returned delinquent for the non-payment of the taxes so charged thereon as aforesaid for the year 1868, only were certified by the auditor
126 to the sheriff of Webster county for sale in the year 1869, and the same were advertised for sale accordingly by the sheriff of said county, and that one of the associates of the said Brockerhoff, the said Rich, & Owen, and they believe the said Conrow, but as to the latter they are not certain, & one of the Baltimore parties, together with said Shrieve, attended at Webster court-house on the day said land was so advertised to be sold, & the party so attending on behalf of said Brockerhoff & his associates, upon examining the advertisement of said sale and the list of lands to be sold posted on the door of the court-house of said county, found the words "taxes paid" written on said list opposite each of the said tracts of 100,000 acres and 58,000 acres, and this, together with the conduct of said Shrieve at and before that time and other facts learned by him on that day, caused the said party to abandon the said agreement between the said Shrieve & Brockenhoof & others, as hereinbefore stated. These plaintiffs have learned since the filing of their original bill that the said defendant Rich denies that he had anything to do with the entry of said two tracts of land or either of them on the land books of Webster county in 1868, and claims that he was a *bona fide* purchaser of said tracts of land and each of them at the tax sale thereof in 1869, all of which these plaintiffs deny; and they are advised & believe & so charge that even if the claim
127 so made by said Rich were true he could derive no better title to the said tracts of land or either of them growing out of said entry thereof on said land books than Shrieve himself could have obtained if he had purchased lands in his own name. But these plaintiffs are informed & believe & so charge that before and at the time of the sale and purchase of the said two tracts of land, as hereinafter stated, the said Rich and those interested and acting with him in said purchase were fully informed of the illegal & fraudulent acts, proceedings, & purposes of the said Shrieve in relation to the said two tracts of land hereinbefore stated, and that the said Rich and his said associates in the fraud aided and assisted the said Shrieve to the extent of their ability in carrying out his said illegal & fraudulent designs and purposes in regard to said two tracts of land. And these plaintiffs, further complaining, say that the words "taxes paid," written on said list opposite each of the said two tracts on land as aforesaid, were so written thereon either by the said Shrieve, Rich, or some one acting with them, or by their procurement, in furtherance of the said fraudulent designs and purposes of the said Shrieve & his said confederates in fraud, and especially for the purpose of preventing all persons not in the secret nor connected with them in interest from bidding on the said tracts of land, or either of them, when they should be sold, and the result was just what they intended it should be. Other persons, citizens of the

said county of Webster, who might & probably would have put in bids for said tracts of land when sold, seeing said words written on said list, necessarily took it for granted that no sale of either
128 tract would be made, & therefore paid no further attention to them, and the result was that said Rich & his co-conspirator, having in some way obtained control of the sheriff who made the sale, had it all their own way and, selecting a favorable time *and selecting a favorable time* when no one was paying any attention to their proceedings, the said two tracts of land were on the 24th day of September, 1869, sold by said sheriff for the said taxes of 1868 alone, and bid in by the said Rich on behalf of himself and his said confreres in fraud, G. P. Shrieve and Albert Owen. In this connection the certified abstracts, marked Exhibits "E" and "F," filed with the original bill in this cause, are here referred to and asked to be read as parts of this bill. By reference to the lists contained in said abstracts it will be seen that they are so imperfect as to be of no binding force under the law. They fail to show what estate was held in the lands sold by the persons to whom they were charged or what estate therein was sold & purchased at said sale, and they fail to show that said lists were returned to the office of the recorder of Webster county within ten days from the day said sale was made; that after said sale & purchase the said Shrieve and Owen, having performed their respective parts in the consummation of the said fraud up to that point, dropped out and transferred to said Rich their interest in the 58,000 acres and allowed him to take the certificate of purchase of the 100,000 acres in his own name, and the said Rich, for the purpose, if possible, of the more effectually carrying out the said fraud, assigned to the defendant Thornton Conrow the one-half of the said tract of 100,000 acres. These
129 plaintiffs are informed & believe & so charge that said Conrow at & before the date of said assignment was fully informed of all the facts hereinbefore stated in relation to the entry of said land on the land books by the said Shrieve and of his objects & purposes in so doing and of the objects & purposes, acts & doings, of said Rich and his said confederates in relation to the said lands, including his purchase thereof under the circumstances aforesaid, and that he is therefore in equity a party to said fraud; but they are also advised & believe and so charge that if they are mistaken in all this, still the said Conrow can derive no better title to the lands so assigned him by said Rich under the facts & circumstances of this case than the said Rich would have derived thereto if he had not made said assignment.

That afterwards the said Rich and Conrow procured from B. Molohan, surveyor of Webster county, two papers purporting to be plats & reports of the boundaries of the said two tracts of land, and on the 28th day of September, 1870, they, in pursuance of the said fraudulent enterprise and, as they supposed, in consummation thereof, procured from the recorder of said county what purported to be a separate deed for each of the said tracts of land—that is to say, one purporting to convey to said Rich & Conrow jointly the said 100,000 acres and the other purporting to convey to said Rich

alone the 58,000 acres; all of which will more fully appear by reference to the certified copies of said supposed deeds, receipts of the sheriff and assignment thereon, plats and reports filed with
130 the original bill in this cause as Exhibits "G" & "H" respectively, & the same are here asked to be read as parts of this bill; and these plaintiffs, further complaining, say that some time late in the year 1870 or in 1871, when it was too late to have said tract of 100,000 acres entered in the land books of said county of Webster and charged with taxes for the year 1870, the said Rich & Conrow were informed in some way that said William McCleery, if he ever had title to the said 100,000 acres of land, had conveyed the same to some other person in his lifetime and the same was then claimed by one Clifford, Viscount de Fleury. This tract was not entered on the land books of Webster county for the year 1870 or for any other year in the name of said Clifford, Viscount de Fleury, and was not entered in said land books for said year 1870 in the name of any person. Delay was dangerous to Rich and his confederates, and how to bring about a sale of the said tract for the taxes of 1870 at the tax sale to be made in 1871 was the question. The copy of the land book of said county for the year 1870 in the office of the auditor, like the original in the said county, did not contain an entry of said tract in the name of said De Fleury, and so a base but perfectly apparent forgery was perpetrated upon the said copy of the land book of said county, in the office of the auditor, for the year 1870, by or at the instance of the said Rich or some of his confederates, by which an entry was written therein out of place, charging the said tract of land of 100,000 acres to said Clifford, Viscount de Fleury, and assessing the same for taxes in his name
131 for that year, and then, the more effectually to carry out this forgery, the footings of said book, when necessary, were erased, as plainly appears, and the necessary footings added, and then, in order to make this forgery effectual, the said Rich and Conrow illegally & fraudulently caused and procured the sale of the said 100,000 acres to be made by the sheriff of *of* said county of Webster at the tax sales made in said county in the year 1871 for the taxes of 1870, at which sale they became the purchasers, when no entry or assessment thereof had been made in 1870 as aforesaid and no return of any such taxes as delinquent for said year had been made.

In this connection these plaintiffs refer to the certificate attached to Exhibit "C" filed with their original bill, which certificate they ask may be read as part of this bill. A certified copy of said sheriff's report of sales for the year 1871 is filed with the original bill in this cause as Exhibit "I," and the same is here asked to be read as part of this bill; that in order to further carry out this second edition of the fraud the said Rich and his confederates set out to perpetrate he & the said Conrow procured from the said Molohan, surveyor as aforesaid, what purported to be a report and plat of the boundaries of said tract; and afterwards, on the 3rd day of October, 1872, they illegally & fraudulently & for the express purpose of carrying out & consummating their said last-named fraud procured from the rec-

order of Webster county what purported to — a deed for the said tract of 100,000 acres so purchased by them at the sale thereof,
132 made in 1871, for the alleged non-payment of the taxes thereon of 1870, alleged to have been charged to said Viscount De Fleury. A certified copy of this deed and of said report and plat is filed with the original bill in this cause, marked Exhibit "J," and the same is here referred to and asked to be read as part of this bill.

That by deed dated the 3rd day of May, 1872, the said Rich and Conrow, with their wives, conveyed to the defendant Ferdinand F. Sharp, among other lands, the one undivided third part of all their interest & claim in & to the said tract of 100,000 acres, as is shown by a certified copy of said deed filed with the original bill in this cause, marked Exhibit "K;" that by deed dated December 30th, 1875, the said Rich and wife conveyed to the defendant Abram Waltman an undivided one-eighth interest in & to the said tract of 58,000 acres, as appears by a certified copy of said deed filed with the original bill in this cause as Exhibit "S."

That by deed dated March 1st, 1879, the said Conrow conveyed to the defendant Walter Wood, among other lands, the undivided one-sixth part of the said 100,000 acres, as appears by a certified copy of said deed filed with the original bill in this cause, marked Exhibit "M."

133 That by deed dated October 30th, 1879, the said Rich and wife conveyed to the defendant D. S. Robinson the undivided one-third part of said 100,000 acres in trust to secure the payment of $3,210.00, as is shown by a certified copy of said deed filed with the original bill in this cause as Exhibit "N;" that by deed dated November 17th, 1879, Joseph A. Thompson and James Woodzell, special commissioners, conveyed to the defendant Walter Wood, for himself and the defendants Richard Wood, Edward R. Wood, George Wood, and Randolph Wood, among other lands, "the certain one-sixth undivided title or interest" in the aforesaid 100,000 acres of land, the same which had been conveyed on the 15th day of May, 1872, by the defendant Ferdinand F. Sharp in trust to the said Walter Wood, as is shown by a certified copy of said deed filed with the original bill in this cause, marked Exhibit "O," and the parties to whom the said several conveyances were so made are claiming the lands embraced by said deeds under the said Rich and Conrow, although none of them until a very recent period have attempted in any way to take possession of or exercise ownership over any part of the lands so claimed by them.

That the defendant Andrew Wayne claims to have purchased from some of the other defendants by an executory contract 300 acres, part of the said 58,000, a short time before the commencement of this suit, and he and the defendant Thomas Myers are in the possession of the same, but in what capacity, whether as purchaser or tenant, the said Myers occupies, these plaintiffs do not know,
134 but the said Wayne declares that he has paid no part of the purchase-money of said 300 acres, and will not do so till he gets a good title.

That the said Rich and others of his vendees claim to have leased portions of said lands a short time before the institution of this suit to the defendant- Jesse Hammons & Adonijah Cogar, who occupy the same, but they claim to have been deceived by the said Rich into the acceptance of said leases, and admit the title of Rich and his associates to be bad.

That the said tracts of land of 100,000 acres and 58,000 acres so claimed by the said Rich and Conrow and those claiming under them as described in the said plats, reports, and deeds under which they claim include the whole of the lands hereinbefore described owned by the said Allen T. Caperton in his lifetime and which descended to the plaintiffs Mary E. Braxton, Harrietta C. Gordon, Malinda C. Patton, Lelia C. Stiles, E. J. Caperton, Allen Caperton, and Ella Caperton as his only children & heirs-at-law at his death.

And these plaintiffs, further complaining, aver, charge, and say that all of the aforesaid tax deeds under which the said Rich and Conrow and those claiming under, by, & through them claim*ing* the said tracts of 100,000 acres and 58,000 acres of land, and each of them or any part or parcel of either *of either* of them, are inoperative, fraudulent, illegal, null, and *and* void, for the reasons hereinbefore stated and by reason of manifest defects and irregularities appearing on the face of said deeds and each of them and appearing on
135 the face of the proceedings of record in the office of the recorder of Webster county relating to the sale & purchase of said lands; and they further aver, charge, & say that all of the said deeds, contracts, & leases so made as aforesaid by the said Rich and Conrow or either of them or by any of the said defendants claiming under, by, or through them are in like manner inoperative, illegal, null, & void for the reason, among others, that they are all tainted with the fraud of the said Rich and his confederates hereinbefore stated, and for the further reason that the defendants holding under said deeds, contracts, & leases can have no better title than the said Rich and his said confederates had at & before the time of making the same.

And these plaintiffs, further complaining, say that they are & for a considerable time have been desirous of selling and trying to sell the whole of the said lands so owned by them as the heirs-at-law of the said Allen T. Caperton, deceased, as aforesaid, and, in fact, it is necessary, for financial reasons, that they should do so; but they have been wholly unable to do so by reason of the cloud resting upon their title created by the claims of the defendants in this case under the fraudulent, inoperative, illegal, & void deeds & proceedings aforesaid, and that until the said cloud is removed from their title to their said lands they never can sell them except at such a sacrifice as they are wholly unable to suffer.

These plaintiffs therefore pray that the said Benjamin Rich and the other persons named as defendants in the caption hereof be made and taken as defendants to this bill, and that they be compelled to answer on oath all & singular the allegations thereof in the
136 same manner and to the same extent as if said allegations were here again repeated and they specially interrogated thereto.

That each & all of the deeds hereinbefore mentioned and referred to, as well as all of the said contracts of sale and leases hereinbefore referred to, be set aside, vacated, and annulled and held to be inoperative, fraudulent, null and void, especially as against these plaintiffs and as they affect the lands so owned by these plaintiffs as aforesaid.

That these plaintiffs may be quieted and confirmed in & to their title and claim to the said lands so inherited by them from the said Allen T. Caperton as aforesaid, and that a writ *habere facias possessionem* may be awarded them against the said defendants and each of them and all persons claiming under, by, or through them or either of them any of the said lands of these plaintiffs, in order that these plaintiffs may be put into the full and quiet possession & enjoyment of their said lands, and that these plaintiffs may have such other, general, & further relief in the premises as they may be entitled to in equity.

Also for process, &c.

TOMLIN BRAXTON & OTHERS, *Pl'tiffs*,
By COUNSEL.

FERGUSON AND CAMDEN,
Sol's for Plaintiffs.

137 The exhibits referred to in the foregoing amended and supplemental bill are in words and figures following, to wit:

"EXHIBIT NO. 34."

Robert Morris, 153,900 *Acres*, *Greenbrier Co.*

Robert Brooke, Esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, that by virtue of land office treasury warrants 363, 364, 365, 383, 384, 385, 386, 388, 389, 390 & 391, there is granted by the said Commonwealth unto Robert Morris, Esquire, of the city of Philadelphia, as assignee of Wilson Cary Nicholas, who was assignee of Hudson Martin, a certain tract or parcel of land containing 153,900 acres by survey bearing date the 16th, 17th and 21st days of April, 1794, lying and being in the county of Greenbrier, part on waters of Spring creek, a branch of Greenbrier river, and waters of Laurel creek, Cherry Tree river, Cranberry creek, Williams' river, and main Gauley, the latter all waters of Gauley river, and boundeth as followeth, to wit: Beginning at a large white oak and sugar tree in the edge of the bottom on the Dry fork of Spring creek, corner to Adam Eghole, and with the same S. 16 E. 36 poles, crossing a branch, to a large locust, S. 15 W. 30 poles to a large poplar, S. 16 E. 96 poles to a white walnut and white hickory, S. 6 E. 126 poles to 3 sugar trees, corner to same, and George Clendennen and John Beckley, and with the latter N. 78 W. 280 poles to a birch above the Dry fork, N. 55 W. 176 poles to a large red oak on a flat end of a mountain, S. 85 W. 206 poles to two lynns and a sugar tree on a run, and down the same S. 10

W. 92 poles to an ash, S. 42 poles to a black oak on said branch, S. 42 W. 44 poles to 2 sugars and a lynn by Hanna's camp, S. 6 W. 148 poles to a large sugar tree on a hillside, S. 15 E. 326 poles to a white oak on a ridge above the Slab camp corner to same and Michael Mannon, and with the latter S.
10 W. 50 poles crossing Spring creek to two cucumbers
138 and a red oak on the bank, and leave the same up the creek
S. W. 180 poles, crossing the creek 4 times to two lynns, N. 60 W. 38 poles, crossing the creek to a bunch of lynns by a rock, S. 77 W. 44 poles to two sugars trees and beech, S. 15 W. 266 poles, crossing the creek twice, to a double chestnut in a bend of the creek, S. 85 W. 312 poles, crossing the creek three times to two poplars, a Spanish oak and yellow lynn, in a small bottom, and leaving the creek S. 50 W. 400 poles out of the head of a branch of the same to a large Spanish oak and 3 sugar trees on the point of a ridge, near the forks of the old and new road, said oak marked (H. M.), N. 85 W. 120 poles to 2 Spanish oaks, N. 40 W. 216 poles to 2 sugar trees and a chestnut by the said old road, N. 70 W. 148 poles to a black oak on a hillside, N. 20 W. 124 poles to two cherry trees, S. 60 W. 74 poles to a double sugar tree S. 30 W. 108 poles to 3 cherry trees, N. 85 W. 200 poles to pointers, N. 45 W. 200 poles to three beeches by the old road on the dividing ridge between Clear creek and Laurel creek, and along said ridge N. 70 W. 612 poles to 3 beeches and a cherry tree, N. 30 618 poles to a red oak, chestnut and sugar-tree sapling by the road, N. 60 W. 55 poles to 2 sugars and an ironwood, W. 510 poles to 2 birches, an ash and sugar tree, N. 40 W. 84 poles to 3 beeches, N. 85 W. 200 poles to 2 beeches and a sugar tree, S. 60 W. 300 poles to a yellow lynn on the top of a hill, N. 60 W. 236 poles to two Spanish oaks and yellow lynn, N. 80 W. 64 poles to 2 Spanish oaks, N. 20 E. 1525 poles to a beech and maple, and black oak on the top of a ridge, N. 5 W. 292 poles to 2 large sugar trees, N. 45 E. 34 poles to 2 sugar trees and an ash, N. 10 W. 218 poles to a chestnut oak and maple, N. 15 E. 424 poles to a lynn and sugar tree in a hollow, N. 30 E. 346 poles to 3 sugar trees on the point of a ridge, opposite the fork of Laurel creek and Cherry Tree river, N. 45
W. 500 poles to a large poplar and beech, N. 10 E. 190 poles to a
139 sugar tree and yellow lynn in the edge of a bottom, N. 60 W.
82 poles to 3 sugar trees on the S. side of Cherry Tree river, and crossing said river, N. 10 W. 500 poles to a large poplar and a maple in a flat, S. 70 128 poles to a sugar tree and maple, N. 190 poles to a white oak on a narrow edge near Gauley river, N. 50 E. 196 poles to a sugar tree and hickory by a road, N. 35 W. 68 poles to a white oak and beech, N. 35 E. 76 poles crossing Cranberry to a poplar and elkwood on the bank, N. 42 W. 12 poles to 3 chestnuts marked A. W., in the fork of Gauley and Cranberry, and thence north 72 E. 72 poles to a large black oak and maple, S. 70 E. 28 poles to a chestnut, hickory and red oak near the head of a drain of Cranberry, N. 80 E. 32 to a sugar tree and hickory, N. 88 E. 82 poles to a double poplar, S. 80 E. 60 to a chestnut on the top of a ridge, N. 35 E. 52 poles to a dogwood and poplar, S. 73 E. 86 poles to two beeches, N. 67 E. 66 poles to a black oak and poplar, S. 65 E.

140 poles to a yellow lynn and hickory and sugar tree on a flat, N. 60 E. 58 poles to a large white oak and poplar, N. 15 E. 52 poles to a sugar tree in a rich flat, N. 67 E. 110 poles to a yellow lynn in a flat, N. 50 E. 54 poles to a large chestnut on a point, E. 88 poles crossing a branch of Cranberry to a chestnut and service, N. 55 E. 136 poles crossing a branch to a poplar and service, S. 35 E. 16 poles crossing a branch to a white oak and black oak, N. 75 E. 240 to a poplar and chestnut on a flat marked H. M., on waters of Cranberry, N. 3 W. 380 poles crossing a creek of Gauley at 280 poles, to a sugar tree and white oak, N. 40 E. 48 poles to a hickory and poplar on the top of a ridge, N. 10 W. 516 poles to a chestnut and 2 sugar trees, S. 45 W. 196 poles crossing a creek to poplar on the top of a ridge, N. 55 W. 64 poles to a chestnut on the top of a ridge, N. 80 W. 44 poles to a black oak and white oak, N. 40 W. 66 poles to a black oak, yellow lynn and sugar tree on a little knob above the river, S. 60 W. 40 poles to a large chestnut and dogwood, N.
140 85 W. 52 poles to a large black oak on a hillside near the top, W. 34 poles to a chestnut oak and gum, N. 75 W. 124 poles to a chestnut on the top of a ridge near a fork N. 20 W. 32 poles to a white oak at the head of a hollow N. 65 W. 144 poles to a white oak and poplar on a hillside, N. 25 E. 50 poles, crossing Gauley river below an island to 3 small white oaks and a maple on the bank, and on a line of Lane's bottom survey, and running with the same up the river S. 25 E. 28 poles, N. 76 E. 50 poles to a sugar tree opposite islands, and leaving the river with the same, N. 15 E. 60 poles to a large chestnut corner to same and Matthews, and with Mathews north 70 E. 264 poles to a red oak and maple on a ridge, N. 25 E. 572 poles, crossing Cherry creek to a large chestnut oak, N. 42 E. 224 — to a black — near the top of a knob, corner to a survey of 570 acres made for Alexander Welch on said line, and leaving Mathews, and with Welch's S. 10 E. 90 poles to 3 chestnuts on the top *top* of a hill, S. 70 E. 132 poles to a large poplar, white oak and maple, N. 60 E. 20 poles to two white oaks and a maple at Mazer's road, N. 40 E. 164 poles, crossing Glade creek at 130 poles to a white oak, E. 60 poles to a chestnut and dogwood on a low ridge, S. 35 E. 64 poles to a large white oak on a flat, N. 75 E. 56 poles to a maple and chestnut oak on the top of the river ridge, N. 50 E. 34 poles to a forked chestnut, N. 15 E. 160 poles to a forked cherry tree and white walnut, S. 37 E. 18 poles to a chestnut in the edge of Laurel, N. 55 E. 30 poles, crossing the upper Glade run near the river and below the falls in said run to a maple, N. 25 W. 110 poles to two white oaks, corner to the same, and a survey made for Gilliland and Abner Hamilton of 752 acres with the latter, N. 25 E. 420 poles to two poplars on Hamson's county line, now Randolph, and leaving Hamilton, and running with said county line, S. 55 E. 2900 poles to pointers on said line, and leaving said line S. 4930 to the beginning.
141 But it is always to be understood that the survey upon which this grant is founded includes a survey of George Clendenen's of 400 acres on Cherry Tree bottom, one survey of Samuel Taylor for 146 acres on both sides of the road that leads

from Sinking creek to Cherry Tree bottom, also one on the road that leads from Cherry Tree bottom to Gauley river at Crain's *sanging* camp containing 100 acres, one of 150 acres, including a sugar-tree flat and walnut ground on both sides of said road, also 190 acres in the forks of Laurel creek including a knob known by the Sugar Tree knob, and one for James Maze of 190 acres about 1 mile N. W. of Cherry Tree bottom on a ridge called the Horse ridge, also one of 150 acres on a ridge S. of Williams river on a road that leads from Cherry Tree river to Williams bottom, also two hundred and eighty acres on Williams river including Williams bottom, also one for Philip Hall and Henry Stockwell, of 500 acres, between Gauley river and Williams river, also one for 450 acres on a ridge on the S. side of Williams river on the road that leads from Williams bottom to Cranberry creek, also one for James Edgar, of 643 acres, on a flat ridge between Cherry Tree bottom and Laurel creek on the old road, one for 195 acres on the old road about one mile south of Laurel creek, including both sides of said road, also one of 83 acres on Laurel creek, where said old road crosses the creek, also an entry made for Henry Stockwell of 80 acres on the right-hand fork of Cherry Tree river, above where James Maze lived, about 5 miles, also Dominick Donally's entry of 200 acres to begin at the foot of a knob, 2½ miles from Cherry Tree bottom on the dividing ridge between Cherry and Cranberry, to include chiefly branches of Cranberry, also one hundred and twenty acres, to begin about 3 or 4 miles from Cherry Tree bottom on said ridge, and about one and a half miles further up said ridge, to include the waters of Cranberry, also 200 acres described by
142 James Gillian, on waters of Cranberry near a place known by the rock camp, also Samuel Taylor's entry of 54 acres to begin adjoining his survey of 146 acres on the road to Cherry Tree bottom to join said survey on the W. and to include a mill seat on Laurel creek, also four hundred acres for Robert Young on head branches of Spring creek, and heads of Cherry Tree river, also 400 acres for Jacob Hutsenpiller and James Eccles, on waters of Spring creek, to begin 3-quarters of a mile to the right hand of the road that leads from Sinking creek to Cherry Tree bottom, beginning at a hickory and lynn, at the elk lick, and extending towards Mannon's bottom for quantity, and towards the Gravelly spring, also Samuel Lewis and Francis Ludington 285 acres on the road that leads from Cherry Tree bottom to Williams bottom, to begin on the top of the mountain N. of Cranberry, and to extend N. W. along both sides of the road, to include a camp and place known by the name of Buffalo Calf ground, also 400 acres to begin at the head of the bottom, N. side of Gauley river, opposite the mouth of Williams river, and extend up Gauley river and out from the river for quantity, also 200 acres to begin at the lower end of the said bottom, and thence down the river, and out from same, and extend up round an entry of 200 acres made for Joseph Maze to join their above entry for quantity, (which entry of Maze's stands valid), also 300 acres on Cranberry river, about six or seven miles above where Williams road crosses Cranberry, to begin at the lower end of the bottom, and to extend up both sides of the river, to include

the bottom on both sides for quantity, also 400 acres to begin near the top of the ridge points down in the fork of Cherry Tree about ½ mile from the fork above Cherry Tree bottom, and about 1½ miles above said bottom, and to extend up the ridge for quantity, also 400 acres on Gauley river to join the upper end of their entry of 400 acres as above described, to include bottoms on both sides the river, and to extend up said river to join the Harrison line for quantity, and also William Humes' entry of 400 acres at the
143 Gravelly spring on the road that leads to the Cherry Tree bottom, beginning at a birch tree at the head of the spring, and running W. and thence including the head branches of Cherry Tree for quantity, also 400 acres lying on a mountain at the head of the right-hand fork of Spring creek, that forks at the head of Mannon's bottom, and on the right-hand fork from the place called the Panther camp, including a flat on the mountain at the head of said fork, also 200 acres on the mountain on the N. side of Spencer Cooper's survey on the road leads from Sinking creek to Cherry Tree bottom at forks of the road, where the new road leaves the old road, including a flat and said forks of the said road, Joseph Maze and Thos. Edgar's entry, 200 acres, to begin about 20 poles S. of the head of a spring, the road crosses about 30 poles from its head and about 1 mile from Cherry Tree bottom, said spring a branch of a run empties into Cherry Tree near a lick, a small distance about Mazer's sugar camp, and to the run nearly W. to include a flat ridge, and down the big ridge for quantity, also John McMillious' entry for 50 acres on the left-hand fork of Spring creek, about half mile to the right hand of the road that leads from John McMillious to the Cherry Tree bottom, to join an entry made for William Humes on the E., and to extend easterly to include a tree marked I. M. G., and a large quantity of sugar trees, all of which having a preference by law to the warrants and rights upon which Robert Morris' survey is founded, liberty is reserved that each of the surveys and entries shall be firm and valid, and shall have the same effect and may be carried into grant or grants, and this grant be no bar either in law or equity, to the confirmation of their titles as before mentioned and reserved, with its appurtenances, to have and to hold the said tract or parcel of land with its appurtenances to the said Robert Morris and his heirs forever (except before excepted.)

In witness whereof the said Robert Brooke, Esq'r, gov-
144 ernor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 25th day of March, in the year of our Lord, one thousand seven hundred and ninety-five, of the Commonwealth nineteenth.

ROBERT BROOKE.

(Indorsed on back :)

"LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy of the records of this office.
Witness my hand and seal of office this 28th day of April, 1885.
[SEAL.] J. A. WINGFIELD,
Reg. Land Office."

145 EXHIBIT No. 35.

This indenture made this 13th day of March in the year of our Lord 1797, between Robert Morris of the city of Philadelphia in the Commonwealth of Pennsylvania Esquire and Mary his wife of the one part and William Cramond of the same city merchant of the other part witnesseth:

That the said Robert Morris and May his wife as well for and in consideration of the sum of five shillings lawful money of Pennsylvania to them well and truly paid by the said William Cramond at or before the sealing and delivery hereof the receipt whereof is hereby acknowledged, as for divers other good causes and valuable considerations them the said Robert Morris and Mary his wife more especially thereunto moving, have granted bargained and sold aliened enfeoffed released and confirmed, and by these presents do grant bargain and sell, alien- enfeoff release and confirm unto the said William Cramond and to his heirs and assigns all that certain tract piece or parcel of land containing three hundred and twenty thousand acres by survey bearing date the 1st day of April 1794, situate lying and being in the counties of Wythe & Russell (the greater part thereof in Wythe) in the Commonwealth of Virginia on both sides of Sandy creek a branch of the Ohio and bounded as follows, viz: Beginning at five chestnut trees on top of a ridge that divides the waters of Tug fork of Sandy creek from the waters of Guyandotte, at a place which is frequently used as a crossing place from the mouth of Brown's creek in Tug river to Indian creek
146 a branch of Guyandotte and near the head of Brown's creek, being a corner of a survey of Wilson Cary Nicholas and with a line thereof S 35 W thirty-six and one-quarter miles, crossing several branches of Sandy creek viz, Tug fork, the Clear fork, Bartlett's creek, Sandy creek & Bradshaw's creek, to the end of a ridge that divides the waters of Panther creek and Knox creek two miles on the course S 52 E from a low gap in the ridge that divides the waters of Main Sandy creek and the Louisa fork of Sandy at an old encampment: Thence N 52 W eleven miles along a ridge that divides the waters of Panther and Knox creeks, and leaving on the northwest side the main dividing ridge and crossing some of the spurs of the same to two walnuts two Spanish oaks and a chestnut oak on the top of a ridge that divides Panther and Knox creeks thence S 30 W five and one-half miles leaving the ridge on the southwest side pl crossing between the head-waters of Knox and Peter's creeks beg sing Knox creek about four miles from the head to four th oaks on the northwest bank of the same near the mouth of small branch, thence N 33 E 21 miles crossing Panther at eleven and a half miles and crossing Main Sandy creek at fifteen miles, where little War creek empties into the same on the northeast side and up said War creek to the forks thereof and up the northeast fork to the head and along a ridge and crossing the same to two poplars and two chestnut trees on a branch of Guyandotte six miles from the mouth of little War creek and thence S 25 E two and three-quar-

ters of a mile crossing said branch to a lynn & three chestnut
147 trees in a low gap nearly opposite to the mouth of Tug river and about four computed miles from the same. Thence N 50 E twelve and a half and one-sixteenth of a mile continuing on a ridge two miles and leaving it on the southeast and crossing several branches of Tug river to a double chestnut tree on the top of said ridge. And thence S 65 E 10 miles along said ridge and crossing several small branches to the beginning. Excepting nevertheless out of the above survey 880 acres of land included therein (exclusive of the above quantity) held by prior rights and not intended to be hereby granted & conveyed (which described tract of land the Commonwealth of Virginia by patent under the hand of Robert Brooks Esquire then governor of Virginia and under the lesser seal bearing date on the 4 day of March A D 1795 and duly recorded at the city of Richmond granted unto the said Robert Morris in fee simple)

Also all that certain tract or parcel of land containing 480,000 acres by survey bearing date the 10th day of September 1794, situate lying and being in the county of Wythe in the Commonwealth of Virginia on Tug and Guyandotte rivers and the waters thereof bounded as follows. Beginning at two poplars a walnut and sugar tree in a bottom on the south side of the main fork of Tug river a branch of Sandy river a corner of a survey of 500,000 acres of Wilson Carey Nicholas and one of 150,000 acres of David Patterson and with the line of the latter S. 53 W. 2,560 poles crossing said
148 river to 3 white oaks by a branch of said river thence leaving the same N. 25 W. 880 poles to 5 white oaks corner to a survey of 300,000 acres made for said Nicholas and with the lines thereof N. 35 W. 1,750 poles running two and one-half miles to said river and down the same to 5 chestnut trees and a double poplar on the bank of the same a small distance below the mouth of Elkhorn creek N. 10 W. 1,600 poles leaving the river and crossing a ridge between the same and Brown's creek a branch of said river and extending along a spur of the dividing ridge to 5 chestnut trees on the top of the same at the place generally used for a crossing from the mouth of Brown's creek on Tug river to Indian creek a branch of Guyandotte being a corner to another survey made for said Nicholas and Jacob Kenig of 320,000 acres and with the lines of the same and leaving the former N. 65 W. 3,200 poles along the said ridge some of the spurs thereof and crossing the same to a double chestnut tree a black oak and sourwood on the top thereof S. 50 W. 3,940 poles along said ridge some distance and leaving the top of the same and crossing some of the spurs thereof chiefly on the south side and crossing some of the waters of Tug river to a lynn and three chestnut trees in a low gap of the same, nearly opposite to the mouth of said river where it empties into Sandy river N. 25 W. 880 poles leaving said ridge and crossing some small branches of Guyandotte to two poplars and two chestnut trees near a branch of said river. Thence leaving the lines of said survey north 6,800 poles crossing Laurel creek
149 and several branches of the same the dividing ridge between

said creek and Huff's or Cane creek and crossing the last mentioned creek a small distance above the mouth to 3 sugar trees and a buckeye by a small branch of Guyandotte river thence N 85 E 10,050 poles crossing Guyandotte and several branches thereof to a line of a survey of 500,000 acres made for said Nicholas and with the same south 9700 poles crossing Guyandotte Branson's fork and Indian creek to the beginning (which last described tract or parcel of land the said Commonwealth of Virginia by patent under the hand of Robert Brooks Esquire and the lesser seal as aforesaid bear-g date the 23rd day of March A D 1795, and duly recorded at the city of Richmond in Book No 31 page 388, granted unto the said Robert Morris in fee simple)

Also all that tract or parcel of land conta-ng 12170 acres by survey bear-g date the 23d day of April 1794. situated lying and being in the county of Greenbriar on the head waters of Clear creek a branch of the Me-dow river adjoin-g a large survey made for Hudson Martin in the said Commonwealth of Virginia and bounded as followeth, to wit: Begin-i-g at a corner of said Martin's survey calling for pointers and with the same N 45 W 200 poles to 3 beeches by a path a birch tree marked "J B" N 70 W 612 poles to 3 beeches and a cherry tree on said path, N 30 W 618 poles to a red oak ches-nut and sugar sapling N 60 W 55 poles to two sugar trees and an iron wood
150 west 510 poles to two beeches and an oak and sugar tree on a ridge, north 40 W 84 poles to three beeches N 85 W 200 poles to 2 beeches and a sugar tree S 60 W 300 poles to a yellow lynn on top of a hill N 60 W 236 poles to 2 Spanish oaks and a yellow lynn N 80 W 64 poles to 2 Spanish oaks corner to the same and leavi-g the same south 900 poles crossing a run to a large Spanish oak and maple S 65 E 330 poles crossing a branch of Clear creek to 2 yellow lynns east 820 poles crossing the main fork of Clear creek at 330 poles and other branches to a ches-nut and two beeches S 65 E 176 poles to a Spanish oak and beech in a large flat, N 40 E 88 poles to a Spanish oak and elk-wood S 65 E 875 poles crossing some small branches to a yellow lynn & beech near the top of the dividing ridge between Clear and Sinkey creeks N 27 E 520 poles to the begin-g (which last described tract or parcel of land the Commonwealth of Virginia by patent under the hand of Robert Brooks Esquire and the lesser seal as aforesaid bear-g date 21st day of March 1795 and recorded at Richmond in Book 32 page 161 granted unto the said Robert Morris in fee simple

Also all that tract or parcel of land containing 9300 acres by survey bear-g date the 18th day of April 1794 situat-d lying and being in the county of Greenbriar in the Commonwealth of Virginia on the waters of Gauly river and some of the waters of Big Laurel creek a branch of Cherry Tree river adjoining a survey made for Hudson Martin and the lands of Robert Young and bounded as follows, viz:

151 Beginning at two Spanish oaks on a ridge on waters of Gauley river corner to said Martin's own survey and with the same N 20 E 1525 poles crossing different small branches to a black oak beech and maple on the top of a ridge southwest side of Laurel

creek and north 5 W 292 poles to two sugar trees on a flat N 45 E 34 poles to two sugar trees and and ash and N 10 W 218 poles to a ches-nut ash and maple N 15 E 310 poles to Robert Young's line near the corner yellow lynn and chestnut on the point of a ridge and with said line N 80 W 1142 poles to a poplar marked 2 M corner to the same and leaving the same S 13 E 2530 poles to the beginning (which last described tract or parcel of land the said Commonwealth of Virginia by patent as aforesaid bearing date the 21st day of March A D 1795 recorded at the city of Richmond in Book 32 page 160, granted unto the said Robert Morris in fee simple).

Also all that certain tract or parcel of land containing 24630 acres by survey bearing date the 23d day of April 1794, situated lying and being in the said county of Greenbrier situated on the head waters of Muddletepeg and head branches of Beaver creek north branches of Gauley river and south branches of Birch river including part of Birch river adjoining the lands of Adonijah Mathews, Moses Hunter Jacob Kuhn, John D Littlepage and a survey made for said Martin of 1300 acres and the lands of Henry Hunter and Alexander Welch and bounded as followeth, to wit: Beginning at
two small black oaks corner to said Mathews on head waters
152 of Little Beaver creek and heads of northeast branches of
Muddletepeg and running with the same S 77 E 880 poles to a chestnut and maple corner to the same and Hunter and with Hunter east 64 poles to two chestnuts on the same and corner to Hunter and leaving Hunter and running with Kuhn N 15 E 900 poles with different surveys to a maple and birch on a ridge on a line of a survey of 1000 acres made for Wm Gillian No 4 and with the same N 60 E 266 poles to a maple corner to the same and a survey of 770 acres the land of John D Littlepage and with north 60 poles to a white oak on a ridge N 15 W 90 poles to three chestnuts on a ridge and leaving Littlepage N 15 E 1660 poles crossing Birch river and a ridge to three lynns and a poplar on the foot of a ridge near the north branch of Birch river and on the foot of a hill south side of a branch west 240 poles crossing a ridge to a poplar and white oak in a hillside near a drain of Birch river and down said drain S 42 W 74 poles to a large poplar and white oak near Birch river above the mouth of said branch corner to his survey of 1300 acres and running with the same N 87 W 1260 poles to a sugar tree and beech corner to Hunter and with N 75 W 200 poles to a white oak S 65 W 40 poles to a white oak west 32 poles to a beech and two dogwoods N 30 W 34 poles to a sugar tree and buckeye on said line corner to a survey of Welch's and with the same S 60 W 48 poles to a beech S 10 W 60 poles to a white oak and large poplar S 5 E 82 poles to a white oak, S 5 W 140
poles to a sugar tree S 45 W 132 poles to a beech S 70 W 100
153 poles to a red oak and beech corner up the right hand fork
of Birch which empties into Birch river at the 3 foot lick and leaving said Welch's line thence by protraction S 11 E 250 poles crossin- the division ridge of said fork waters of Muddletepeg water to the beginning, excepting out of the above-described tract of land the following tracts to wit: A survey of 200 acres adjoining the in-

tersection of the lines of said Mathews and Moses Hunter, and an entry of 200 acres on a branch of Big Beaver creek, adjoining Jacob Kuhin survey in the name of John Woodin, also 200 acres in the name of Thomas Frazier by an entry on a south branch of Birch river which empties into Birch river opposite to a camp known by May's sur-ying camp called the Poplar camp all of which surveys are included in the boundaries of the last-described tract of land (exclusive of the said quantity of 24630 acres) all of which are exceptions in the first hereinafter recited patent and are intended to be hereby excepted in like manner (which last-described tract of land the said Commonwealth of Virginia by patent as aforesaid bear-g date on the 23 day of March A D 1794. Recorded at the city of Richmond in Book 31 page 386 granted unto the said Robert Morris in fee simple.

And also all that certain tract or parcel of land containing 153900 acres by survey bear-g — the 16th 17th and 21st day of April 1794. Situate lying and being in the county of Greenbriar aforesaid on waters of Spring creek a branch of Greenbriar river and waters
154 of Laurel creek Cherry Tree river, Cranberry creek Williams river and main Gauly the latter all waters of Gauly river and bounded as followeth, to wit:

Beginning at a large white oak and sugar tree in the edge of a bottom on the Dry fork of Spring creek corner to Adam Eighole and with the same S 16 E 36 poles crossing a branch to a large locust S 15 W 30 poles to a large poplar, S 16 E 96 poles to a white walnut and white hickory S 6 E 126 poles to 3 sugar trees corner to same and George Clendenin & John Beckley and with the latter N 78 west 280 poles to a burch above the Dry fork N 55 W 176 poles to a large red oak on a flat end of a mountain S 85 W 206 poles to 2 lynns and a sugar tree on a run and down the same S 10 W 92 poles to an ash S 42 poles to a black oak on said branch, S 42 W 44 poles to 2 sugars and a linn by Hanna's camp, S 6 W 148 poles to a large sugar tree on a hillside S 15 E 326 poles to a white oak on a ridge above the Slab camp corner to the same and Mich'l Mannen and with the latter S 10 W 50 poles crossing Spring creek to two cucumbers and two red oaks on the bank and leaving the same up the creek south — west 180 poles crossing the creek 4 times to two lynns N 60 W 38 poles crossing the creek to a bunch of lynns by a rock, S 77 W 44 poles to two sugar trees and a beech S 15 W 266 poles crossing the creek twice to a double chestnut in the bend of the creek S 85 W 312 poles crossing the creek thrice to two poplars a Spanish oak and yellow lynn in a small
155 bottom and leaving the creek S 50 W 400 poles out of the head of a branch of the same to a large Spanish oak and three sugar trees on the point of a ridge near the forks of the old & new road said oak marked "H. M." N 85 W 120 poles to two Spanish oaks N 40 W 216 poles to two sugar trees and a chestnut by the old road N 70 W 148 poles to a black oak on a hillside. N 20 W 124 poles to two cherry trees S 60 W 74 poles to a double sugar tree. S 30 W 108 poles to three cherry trees. N 85 W 200 poles to pointers. N 45 W 200 poles to 3 beeches by the old road

on the dividing ridge between Clear creek and Laurel creek and along said ridge N 70 W 612 poles to three beeches and a cherry tree N 30 W 618 poles to a red oak chestnut and sugar tree sapling by the road. N 60 W 55 poles to two sugars and an ironwood. West 510 poles to two beeches an ash and sugar tree N 40 W 84 poles to three beeches N 85 W 200 poles to two beeches and a sugar tree S 60 W 300 poles to a yellow lynn on top of a hill N 60 W 236 poles to two Spanish oaks & yellow lynn N 80 W 64 poles to two Spanish oaks N 20 E 1525 poles to a beech and maple and black oak on the top of a ridge N 5 W 292 poles to two sugar trees N 85 E 34 poles to two sugar trees and an ash. N 10 W 218 poles to a chestnut oak and maple N 15 E 424 poles to a lynn and sugar trees in a hollow. N 30 E 346 poles to three sugar trees on a point of a ridge opposite the fork of Laurel creek and Cherry Tree river N. 45 W 500 poles to a large poplar and beech N 10 E 190
156 poles to a sugar tree and yellow lynn on the edge of a bottom N 60 W 82 poles to three sugar trees on the south side of Cherry tree river and crossing said river N 10 west 500 poles to a large poplar and maple in a flat. S 70 W 128 poles to a sugar tree & maple N 190 poles to a white oak on a narrow ridge near Gauley river N 50 E 196 poles to a sugar tree and hickory by a road N 35 W 68 poles to a white oak and beech. N 35 E 76 poles crossing Cranberry to a poplar and elkwood on the bank N 42 W 12 poles to three chestnut- marked A. N. in the fork of Gauley & Cranberry and thence N. 72 E. 22 poles to a large black oak and maple S 70 E 28 poles to a chestnut hickory and red oak near the head of a drain of Cranberry N 80 east 34 poles to a sugar tree & hickory. N 88 east 82 poles to a double poplar. S 80 E 60 poles to a chestnut on the top of a ridge. N 35 E 52 poles to a dogwood & poplar. S 73 E 86 poles to 2 beeches N 67 E 66 poles to a black oak and poplar S 65 E 140 poles to a yellow lynn & hickory & sugar tree on a flat N 60 E 58 poles to a large white oak and poplar. N 15 E 52 poles to a sugar tree in a rich flat N 67 E 110 poles to a yellow lynn in a flat N 50 E 54 poles to a large chestnut in a point east 88 poles crossing a branch of Cranberry to a chestnut and sarvice. N 55 E. 136 poles crossing a branch to a poplar & service S 35 E 16 poles crossing a branch to white oak & black oak N 75 E 240 poles to a poplar and chestnut on a flat marked H. M. on waters of
157 Cranberry N 3 W 308 poles crossing a creek to Gauly at 280 poles to a sugar tree and white oak. N 40 E 48 poles to a hickory & poplar on the top of a ridge N 10 W 516 poles to a chestnut & two sugar trees S 45 W 196 poles crossing a creek to a poplar on the top of a ridge N 55 W 64 poles to a chestnut on top of a ridge N 80 W 44 poles to a black oak & white oak N 40 W 66 poles to a black oak yellow lynn & sugar tree on a little knob above the river S 60 W 40 poles to a large chestnut & dogwood N 85 W 52 poles to a large black oak on hillside near the top west 34 poles to a chestnut oak & gum N 75 W 124 poles to a chestnut on the top of a ridge near a fork N 20 W 32 poles to a white oak at the head of a hollow N 65 west 144 poles to a white oak and poplar on a hillside N 25 E 50 poles crossing Gauly river below an island to 3 small white oaks

and a maple on the bank and on a line of Jones bottom survey and running north the same up the river S 25 E 28 poles N 76 E 50 poles to a sugar tree opposite island and leaving the river with the same N 15 E 60 poles to a large chestnut corner to same & Mathews and with Mathews N 70 E 164 poles to a red oak & maple on a ridge N 25 E 572 poles crossing Cherry creek to a large chestnut oak N 42 E 224 poles to a black oak near the top of a knob corner to a survey of 570 acres made for Alexander Welch on said line and leaving Mathews & with Welch S 10 E 90 poles to 3 chestnuts on the top of a hill S 70 E 132 poles to a large white oak poplar & maple N 60 E 20 poles to 2 white oaks & maple at Maye road
158 N 40 E 164 poles crossing Glade creek at 130 poles to a white oak. East 60 poles to a chestnut & dogwood on a low ridge S 35 E 64 poles to a large white oak on a flat N 75 E 56 poles to a maple and chestnut oak on the top of the river ridge. N 55 east 34 poles to a forked chestnut N 15 E 160 poles to a forked cherry tree & white walnut S 37 E 18 poles to a chestnut in the edge of Laurel N 55 E 30 poles crossing the upper Glade run near the river and below the falls in said run to a maple. N 25 W 110 poles to two white oaks corner to the same and a survey made for Gillian and Abner Hamilton of 752 acres and with the latter N 25 E 420 poles to two poplars on Harrison county line now Randolph and leaving Hamilton and running with said county line S 55 E 2900 poles to pointers on said line and leaving said line south 4930 poles to the beginn-g. (Excepting out of the last-described tract of land the following surveys included within the boundaries of said tract (exclusive of the said quant-y of 153,900 acres) to wit: A survey of George Clendennen's of 400 acres on Cherry bottom, one survey of Samuel Tayler's for 146 acres on both sides of the road that leads from Sinking creek to Cherry Tree bottom. Also one on the road that leads from Cherry Tree bottom to Gauley river at Crane's sur-ying camp containing 100 acre-. One of 150 acres including a sugar-tree flat and walnut ground on both sides of said road also 190 acres in the forks of Laurel creek including a knob known as the Sugar Tree knob, and one for James Maye of 190 acres about one mile northwest of Sugar Tree bottom on a ridge called
159 the Horse ridge Also one of 150 acres on a ridge south of Williams river, on a road that leads from Cherry Tree river to Williams bottom. Also 280-acres of land on Williams river including Williams bottom Also one for Philip Hall and Henry Stockwell of 500 acres between Gauley river and Williams river Also one of 450 acres on a ridge on the south side of Williams river on the road that leads from Williams bottom to Cranberry creek, one for James Edger for 643 acres on a flat ridge between Cherry Tree bottom and Laurel creek on the old road, one of 195 acres on the old road about one mile south of Laurel creek including both sides of said road. Also one of 83 acres on Laurel creek where said old road crosses the creek Also one entry made for Henry Stockwell of 80 acres on the right-hand fork of Cherry Tree river above where James Maze lived about five miles. Also Dominick Donnaly's entry of 200 acres to begin at the foot of a knob two and a half miles from Cherry

Tree bottom on the dividing ridge between Cherry and Cranberry to include chiefly branches of Cranberry Also 120 acres to begin about 3 or 4 miles from Cherry Tree bottom on said ridge about one and a half miles further up said ridge to include the waters of Cranberry Also 200 acres described by James Gilliand on waters of Cranberry a place known by the Rock camp. Also Saml Taylor's entry of 54 acres to begin adjoining the survey of 146 acres on the road
160 to Cherry Tree bottom to join said survey on the west, and to include a mill seat on Laurel creek Also 400 acres for Robert Young on head branch of Spring creek and heads of Cherry Tree river Also 400 acres for Jacob Hutsonpeller and James Eccles on waters of Spring creek, to begin three-quarters of a mile to the right hand of the road that leads from Sinking creek to Cherry Tree bottom beginning at a hickory an- lynn at the Elk lick and extending towards Mannen's bottom for quantity and towards the Gravelly spring. Also Saml Lewis and Thomas Luddington 285 acres on the road that leads from Cherry Tree bottom to Williams bottom to begin at the top of the mountain north of Cranberry and to extend northwest along both sides of the road to include a camp and a place known by the Buffalo Calf ground. Also 400 acres to begin at the head of the bottom north sides of Gauly river opposite the mouth of Williams river & out from the river for quantity. Also 200 acres to begin at the lower end of said bottom and thence down the river to and out from same to extend up -round an entry of 200 acres made for Joseph Maze to join then above entry for quantity. Also 300 acres on Cranberry river about 6 or 7 miles above where Williams road crosses Cranberry to begin at the lower end of the bottom and to extend up both sides of the river to include the bottom on both sides for quantity. Also 400 acres to begin near the top of the ridge that points down in the forks of Cherry Tree about a half a mile from the fork above Cherry Tree bottom and about
161 one and a half miles above said bottom and to extend up the ridge for quantity. Also 400 acres on Gauly river to join the upper end of their entry of 400 acres above described to include bottom on both sides of the river and to extend up said river to join the Harrison line for quantity. Also Wm Humes' entry of 400 acres at the Gravelly spring on the road that leads to Cherry Tree bottom beginning at a birch tree at the head of a spring and running west and thence including the head branches of Cherry Tree for quantity Also 400 acres lying on a mountain at the head of the right-hand fork of Spring creek that forks at the head of Mannon's bottom and on the right-hand fork from the place called the Panther camp including a flat on the mountain at the head of said fork. Also 200 acres on the mountain on the north side of Spencers Cooper's survey on the road that leads from Sinking creek to Cherry Tree bottom at the forks of the road where the new road leaves the old road including a flat and said forks of said road. Also Joseph Maze's and Thomas Edgar's entry of 200 acres to begin about 20 poles south of the head of a spring, the road crosses about 30 poles from its head and about one mile from Cherry Tree bottom said spring is a branch of a run which empties into Cherry Tree near a

lick a small distance above Maze's sugar camp and to run nearly west to include a flat ridge and down the big ridge for quantity
Also John McMillan's entry for 50 acres on the left-hand fork
162 of Spring creek about a half mile to the right hand of the
road that leads from John McMillan's to the Cherry Tree bottom to join an entry made for Wm Humes on the east end to extend easterly to include a tree marked J M C and a large quantity of sugar trees, all of which surveys are not hereby intended to be conveyed but the same are excepted and reserved (or meant to do so) in the same and in as full and effectual manner as the same are excepted in the hereinafter-recited patent, which last-described tract or parcel of land the Commonwealth of Virginia by patent as aforesaid bearing date the 25th day of March A D 1795, recorded at the city of Richmond in Book No 31 page 400, granted unto the said Robert Morris in fee simple.

The several above-described and hereby granted and conveyed tracts or parcels of land containing and making as follows to wit: 800,000 acres in counties of Wythe and Russell and 200000 acres in the county of Greenbrier in the Commonwealth of Virginia, making in the whole one million of acres together with all and singular the ways woods mines minerals fossils quarries ores sava'nahs marshes waters water-courses rights liberties privileges hereditaments and appurtenances whatsoever unto the said hereby granted lands, hereditaments and premises or unto any part or parcel thereof being belonging or in anywise appertaining and the reversions remainders rents issue and profits thereof and of every part and
parcel thereof and also all the estate right title interest use
163 trust possession property claim and demand whatsoever of
him the said Robert Morris and Mary his wife at law or in equity or otherwise howsoever of in & to the said premises & appurtenances and every part and parcel thereof. To have and to hold the said above mentioned and described several tracts of land hereditaments and premises hereby granted or mentioned or intended to be hereby granted with all and every of the appurtenances (except as before excepted) unto the said William Cramond and to his heirs and assigns to the only proper use benefit and behoof of him the said William Cramond his heirs and assigns forever. And the said Robert Morris for himself and his heirs doth covenant and agree to and with the said William Cramond his heirs and assigns in manner following, that is to say. That he the said Robert Morris is now lawfully seized of a good sure perfect and indefeasable estate of inheritance in fee simple of and in the several respective tracts of land & premises above mentioned and described (except as above excepted) without any manner of condition mortgage limitation of use or uses or other matter, cause or thing whatsoever to alter change charge determine or encumber the same. And hath good right lawful power and full authority to grant sell and convey the same unto the said William Cramond his heirs and assigns to and for his
and their use and behoof forever. And further the said
164 *said* Robert Morris and his heirs shall and will at all times
hereafter upon the reasonable request and at the proper cost

and charges in the law of him the said William Cramond his heirs and assigns make execute and deliver unto the said William Cramond his heirs and assigns all such further acts deeds conveyances and assurances in the law whatsoever for the better and more perfect granting conveying assuring and vesting the tracts of land and premises aforesaid (except as before excepted) in him the said William Cramond his heirs and assigns or his or their counsel learned in the law shall reasonably devise advise or require And the said Robert Morris and his heirs the said premises hereby granted or mentioned or intended to be hereby granted with all and every of the appurtanancis (except as before excepted) unto the said William Cramond and to his heirs and assigns against him the said Robert Morris and his heirs and assigns and against all and every other person and persons whomsoever lawfully claiming or to claim any estate right title or interest whatsoever of in and to the hereby granted premises or any part thereof shall and will well and truly warrant and forever defend by these presents

In witness whereof the said parties to these presents have hereunto and interchangeably set their hands and seals. Dated the day and year first above written.

165 ROBERT MORRIS [SEAL]
MARY MORRIS [SEAL]

Sealed and delivered in the presence of us
JAMES CHALMERS
ROBERT MORRIS JR.
JAMES TATE
HENRY LEE

Received on the day of the date of the above-written indenture of the above-named William Cramond the sum of five shillings, lawful money of Pennsylvania, and other valuable considerations, being in full for the above-conveyed premises.

Witness my hand.

ROBERT MORRIS.

Witness- present at signing—
JAMES CHALMERS.
ROB'T MORRIS, JR.

CITY OF PHILADELPHIA, *ss:*

Before me, Hillary Barker, Esquire, mayor of the city of Philadelphia, in the Commonwealth of Pennsylvania, personally appeared Robert Morris and Mary, his wife, the grantors in the within indenture named, who, in due form of law, acknowledged the said indenture to be their act and deed and desired that the same might be recorded as such. The said Mary, being of full age and by me privat-ly examined apart from her husband, declared that she executed the said indenture of her own free will and accord without any pursuasion thereto, fears, or compulsions of her said hus-
166 band and without any undue interference whatsoever, the contents of said indenture having first been made known to her.

In testimony whereof I, the said mayor, have hereunto set
[L. S.] my hand and caused the seal of the mayoralty of said city to be hereunto affixed this 13th day of March, in the year of our Lord 1797.

HILLARY BAKER, *Mayor.*

Recorded in the office for recording deeds, &c., for the city and county of Philadelphia in Deed Book No. 63, page 45, &c.
[L. S.] Witness my hand and seal of office this 15th day of March, 1797.

MATHEW IRWIN, *Rec.*

VIRGINIA, *To wit:*

At a general court held at the capitol, in the city of Richmond, on the 14th day of November, 1797.

This indenture, together with the certificate of Hillary Baker, Esquire, mayor of the city of Philadelphia, thereunder written, on the motion of William Cramond, a party thereto, is ordered to be recorded.

Teste: WILSON ALLEN, *C. G. C't.*

GREENBRIER COUNTY COURT,
CLERK'S OFFICE, *June 18th*, 1841.

This deed, from Robert Morris and wife to William Cramond, was presented in the office with authenticated certificates thereon certifying as well the due acknowledgment thereof by the venders as the relinquishment of dower thereon by the *feme covert*, and the
167 same is accordingly admitted to record.

Teste: JOHN MATHEWS, *C. G. C.*

A copy from the record.

Teste: MARK L. SPOTTS, *C'k.*

168 EXHIBIT "No. 36."

This indenture, the 28 day of October in the year of our Lord 1814, between William Carmond of the city of Philadelphia in the Commonwealth of Pennsylvania merchant, grantee in the within indenture named and Sarah his wife of the one part, and Thomas Astley of the said city merchant of the other part witnesseth, that the said William Cramond and Sarah his wife for and in consideration of one dollar lawful money of the United States to them in hand well and truly paid by the said Thomas Astley at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted bargained sold alliened enfeoffed and released and confirmed and by these presents do grant bargain and sell alien- enfeoff release and confirm unto the said Thomas Astley and to his heirs and assigns, all and singular the tracts pieces and parcels of lands and p-emises by the within written indenture granted and conveyed unto the said William Cramond,

situated lying and being and butted and bounded and described as is within particularly mentioned excepting as is within excepted. Together with all and singular the ways woods waters water-courses mines minerals fossils, quarries ores savan-ahs, marshes rights liberties privileges hereditaments and appurtanances whatsoever thereunto belonging or in any way appertaining and the reversions remainders rents issues and profits thereof and of every
169 part and parcel thereof & of also all the estate right title interest use possession property claim and demand whatsoever of them the said William Cramond and Sarah his wife at law or in equity of in and to the said premises and appurtanances. To have and to hold all and singular the said tracts pieces or parcels of lands and premises hereby granted or mentioned or intended to be hereby granted with the appurtanances except as within excepted, unto the said Thomas Astley and unto his heirs and assignes. To and for the only proper use and benefit and behoof of him the said Thomas Astley his heirs and assigns forever, and the said William Cramond and his heirs the said tracts pieces or parcels of land or premises hereby granted or mentioned or intended to be hereby granted with the appurtanances except as within excepted, unto the said Thomas Astley and unto his heirs and assigns him the said William Cramond and his heirs, and against all and every person or persons whomsoever lawfully claiming or to claim by from or under him them or any of them, shall and will and well and truly warrant and forever defend by these presents.

In witness whereof the said parties to these presents have thereunto interchangeable set their hands and seals dated the day and year first above written.

WM CRAMOND [SEAL]
SARAH CRAMOND [SEAL]

Sealed & delivered in the presence of
THOMAS M MILLERY
JOHN ASTLEY
JOSHUA M WALLACE JR

170 Received on the day of the date of the above-written indenture of the above-named Thomas Astley the sum of one dollar in lawful money of the United States, being the full consideration money above mentioned.

WM. CRAMOND.

Witnesses present at signing:
THOS. M. WILLERY.
JOHN ASTLEY.
JOSHUA M. WALLACE, JR.

CITY OF PHILADELPHIA, *ss:*

Before me, Robert Wharton, Esquire, mayor of the city of Philadelphia, in the Commonwealth of Pennsylvania, personally appeared Wm. Cramond and Sarah, his wife, the grantors in the above-written indenture named, and in due form of law acknowleged the same to

be their act and desired that it might be recorded as such. The said Sarah being of full age, separate and apart from her said husband by me thereon examined and the full contents of the above-written indenture being first made known to her, she did declare and say that she did voluntarily and of her own free will and accord seal and as her act and deed declare the said indenture without any coercion or compulsion of her said husband.

In testimony whereof I, the said mayor, have hereunto [SEAL.] set my hand and caused the seal of the mayoralty of the said city to be hereunto affixed this 26th day of October, in the year of our Lord 1814.

ROBERT WHARTON, *Mayor.*

171 GREENBRIER COUNTY COURT,
CLERK'S OFFICE, *June* 18, 1841.

The above deed from Wm. Cramond and wife to Thomas Astley was presented in the office with the above certificate endorsed thereon certifying as well the due acknowledgment thereof by the vendors as of the relinquishment of dower therein by the *femme covert* and the same is admitted to record accordingly.

Teste: JOHN MATHEWS, *Clerk.*

A copy from the record.
Teste: MARK L. SPOTTS, *Cl'k.*

Copy.
Teste: L. B. DELLICKER, *Clerk.*

172 EXHIBIT "No. 37."

This indenture made this 10th day of December in the year of our Lord 1840, between Littleton Kirkpatrick of New Brunswick in the State of New Jersey counsellor-at-law and Sophia his wife late Sophia Astly and the only child and heir-at-law of the late Thomas Astly late of the city of Philadelphia Esquire dec'd of the first part, Sarah Astly also of the said city of Philadelphia and widow of the said Thomas Astly of the second part, and Henry Cramond also of the said city of Philadelphia counsellor-at-law of the third part, witnesseth, that the parties of the first and second parts hereto, for and in consideration of the sum of one dollar unto each of the said parties of the first and second parts in hand paid by the said Henry Cramond at the time of the execution hereof the receipt of which is hereby acknowledged and for divers other considerations them thereunto moveing, have granted bargained and sold, enfeoffed released and confirmed and by these presents do grant bargain sell enfeoff release and confirm unto the said Henry Cramond his heirs and assigns, all and singular the tracts pieces or parcels of land and p-emises by the within indenture granted and conveyed situate lying and being in the State of Virginia and located bounded and described as within particularly mentioned (except as within excepted) being all those certain tracts or parcels of land which Robert

Morris and wife by the within written indenture dated 13th
173 day of March A D 1797 recorded in the general court office in the city of Richmond in the State of Virginia aforesaid on the 14th day of November A D 1797 granted and conveyed unto William Cramond in fee and which the said William Cramond and Sarah his wife by the above indenture also endorsed hereon dated 28th of October A D 1814 and *inteded* recorded, granted and conveyed unto the said Thomas Astly in fee, and the said Thomas Astly being so thereof seized, died intestate leaving issue only the said Sophia Kilpatrick to whom the said lands did descend and come as in and by the said indenture will fully appear, together with all and singular the ways, woods, waters, water courses, mines, minerals, fossils, quarries ores savan-ahs, marshes, rights, liberties, privileges, hereditiments and appurtanances thereunto belonging or in anywise appertaining and the reversions and remainders rents issues and profits thereof and all the estate, right, title, interest, use, possession property claim and demand whatsoever of the said parties of the first and second parts at law or in equity, of in and to the same and every part thereof, to have and to hold all and singular the said tracts pieces or parcels of land, within described hereby granted or mentioned or *mention* so to be (except as within excepted) with the appurtanances unto the said Henry Cramond his heirs and assigns, to and for the only proper use benefit and behoof of the said Henry Cramond his heirs and assigns forever and the said Littleton Kirkpatrick for himself and for his wife the said Sophia his and
174 her heirs executors and administrators doth hereby covenant promise, grant and agree to and with the said Henry Cramond his heirs and assigns in manner following, that is to say: that he the said Littleton Kirkpatrick and Sophia his wife and his and her heirs all and singular the heraditaments and premises hereby granted or mentioned or intended so to be with the appurtenances unto the said Henry Cramond his heirs and assigns against him the said Littleton Kirkpatrick and Sophia his wife and against all and every other person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by from or under him her them or any or either of them, shall and will warrant and forever defend by these presents. In witness whereof have interchangeable set their hands and seals. Dated the day and year first above written.

LITTLETON KIRKPATRICK [SEAL.]
SOPHIA ASTLY KIRKPATRICK [SEAL.]
SARAH H. ASTLY [SEAL.]

Sealed and delivered in the presence of us—

NOTE.—(The words "of the said parties of the first and second parts at law or in equity, &c." in the seventh line from the bottom being first written on an erasure)—

JOEL COOK.
GEORGE GRISCOM.
JAS. BAYARD.

CITY OF PHILADELPHIA, *ss:*

We, Joel Cook and George Griscom, aldermen and justices of the peace of the city of Philadelphia, in the State of Pennsylvania,
175 do hereby certify that Littleton Kirkpatrick and Sophia, his wife, and Sarah H. Astley, parties to the above deed, dated the 10th day of December, A. D. 1840, hereon endorsed, personally appeared before us, in our city aforesaid, and acknowledged the same to be their and each of their act and deed, and desired us to certify the acknowledgment to the clerks of the county courts of Greenbrier, Tazewell, Nicholas, Logan, & Russell counties, Virginia, in order that the said deed may be recorded with the clerks of the county courts of any other counties in the said State — Virginia where it may be proper to record the same; and the said Sophia being examined by us privily and apart from her husband & having the deed aforesaid fully explained to her, she, the said Sophia, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 10th day of December, A. D. 1840.

JOEL COOK,
Ald'r'n & ex Officio Justice of Peace. [SEAL.]
GEO. GRISCOM,
Ald'r'n & ex Officio a Justice of Peace. [SEAL.]

CITY & COUNTY OF PHILADELPHIA, } *ss:*
State of Pennsylvania, }

To all whom these presents shall come:

I, Samuel Hart, Esquire, prothonotary of the court — common pleas for the county of Philadelphia, do hereby certify that Joel Cook and George Griscom, Esquires, before whom the above
176 indenture was acknowledged, are now and were at the time of taking said acknowledgement aldermen and *ex officio* justices of the peace in and for the city of Philadelphia, and to their acts full faith and credit are due.

In testimony whereof I have hereunto set my hand and [SEAL.] seal of office the 22d day of March, A. D. 1841.

S. HART, *Protho-tary.*

GREENBRIER COUNTY CLERK'S OFFICE, *June 18th*, 1841.

This the above deed from Littleton Kirkpatrick and wife and Sarah H. Astley to Henry Cramond was presented in the office with the above authenticated certificates endorsed thereon certifying as well the due acknowledgement thereof by the venders as the relinquishment of dower therein by the *feme covert*, and the same is admitted to record accordingly.

Teste: JOHN MATHEWS, *C., G. C.*

A copy from the record.
Teste: MARK L. SPOTTS, *Clerk.*

Copy.
Teste: L. B. DELLICKER, *Rec. Clerk.*

177 EXHIBIT No. 38.

This indenture made the 21st day of December in the year of our Lord 1842, between Henry Cramond of the city of Philadelphia in the State of Pennsylvania chancellor-at-law of the one part, and John Williams of the county of Greenbrier in the State of Virginia farmer and gra-ger of the other part, witnesseth: That the said Henry Cramond for and in consideration of the sum of $13,000 lawful money of the United States of America to him in hand well and truly paid by the said John Williams at the time of the execution hereof the receipt whereof is hereby acknowledged, hath granted bargained sold r-leased and confirmed and by these presents doth grant bargain sell release and confirm unto the said John Williams his heirs and assigns all that certain tract or parcel of land containing 153,900 acres by survey bearing date the 16 17 & 21st days of April 1794 situated lying and being in the county of Greenbrier aforesaid on the waters of Spring creek a branch of Greenbrier river and waters of Laurel creek, Cherry Tree river, Cranberry creek, Williams river and main Gauly the latter all waters of Gauly river and bounded as follows, to wit: Beginning at a large white oak & sugar tree on the edge of the bottom on the Dry fork of Spring creek corner to Adam Eghole and with the same S 16 E 36 poles crossing a branch to a large locust S 15 W 30 poles to a large poplar S 16 E 96 poles to a white walnut and white hickory.
178 S 6 E 126 poles to 3 sugar trees corner to same and George Clendennen & John Beckly and with the lat-er N 78 W 280 poles to a burch above the Dry fork N 55 W 176 poles to a large red oak on flat end of a mountain S 85 W 206 poles to two lynns and a sugar tree on a run and down the same S 10 W 92 poles to an ash. S 42 poles to a black oak on said branch. S 42 W 44 poles to two sugars and a lynn by Hanna's camp S 6 W 148 poles to a large sugar tree on a hillside S 15 E 326 poles to a white oak on a ridge above Slab camp corner to same and Michael Mannen, and with the latter S 10 W 50 poles crossing Spring creek to two cucumbers and 2 red oaks on the bank and *cave* the same up the creek southwest 180 poles crossing the creek 4 times to two lynns N 60 W 38 poles crossing the creek to a bunch of lynns by a rock S 77 W 45 poles to two sugar trees and a beach S 15 W 266 poles crossing the creek twice to a double chestnut in the bend of the creek S 85 312 poles crossing the creek three times to two poplars a Spanish oak & yellow lynn in a small bottom and leaving the creek S 50 W 400 poles out of the head of a branch of the same to a large Spanish oak and three sugar trees on the point of a ridge near the forks of the old and new road said oak marked H M N 85 W 120 poles to 2 Spanish oaks N 40 W 216 poles to two sugar trees and a ches-nut by the old road. N 70 W 148 poles to a black oak on hillside N 20 W 124 poles to two cherry trees S 60 W 74 poles to a double sugar tree S 30 W 108 poles to three cherry trees N 85 W 200 poles to pointers
179 N 45 W 200 poles to 3 beeches by the old road on the dividing ridge between Clear creek and Laurel creek and along

said ridge N 70 W 612 poles to three beeches and a cherry tree N 30 W 618 poles to a red oak chestnut and sugar tree sapling by the road N 60 W 55 poles 2 sugars and an ironwood west 510 poles to two beeches an ash and sugar tree N 40 W 84 poles to three beeches. N 85 W 200 poles to two beeches and a sugar tree S 60 W 300 poles to a yellow lynn on the top of a hill N 60 W 236 poles to 2 Spanish oaks and yellow lynn N 80 W 64 poles to 2 Spanish oaks N 20 E 1,525 poles to a beech & maple & black oak on top of a ridge N 5 W 292 poles to 2 sugar trees N 45 E 34 poles to two sugar trees & an ash. N 10 W 218 poles to a chestnut oak and maple N 15 E. 424 poles to a lynn & sugar tree in a hollow N 30 E 346 poles to 3 sugar trees on the point of a ridge opposite the fork of Laurel creek and Cherry Tree river S 45 W 500 poles to a large poplar and beech N 20 E 190 poles to a sugar tree and yellow lynn on the edge of a bottom N 60 W 82 poles to 3 sugar trees on the south side of Cherry Tree river and crossing said river N 10 W 500 poles to a large poplar and maple in a flat S 10 W 128 poles to a sugar tree and maple north 190 poles to a white oak on a narrow ridge near Gauley river N 50 E 196 poles to a sugar tree & hickory by a road N 35 W 68 poles to a white oak and beech N 35 E 76 poles crossing Cranberry to a poplar & elkwood on the bank N 42 W 12 poles to 3 chestnuts marked A V in the fork of Gauley and Cranberry thence S
180 72 E 72 poles to a large black oak & maple S 70 E 28 poles to a chestnut hickory and red oak near the head of a drain of Cranberry N 80 E 34 poles to a sugar tree & hickory N 88 E 82 poles to a double poplar S 80 E 60 poles to a chestnut on the top of a ridge N 35 E 52 poles to a dogwood and poplar S 73 E 86 poles to 2 beeches N 67 E 66 poles to a black oak & poplar S 65 E 140 poles to a yellow lynn hickory and sugar tree on a flat N 60 E 58 poles to a large white oak and poplar N 15 E 52 to a sugar tree in a rich flat N 67 E 110 poles to a yellow lynn in a flat N 50 E 54 poles to a large chestnut on a point, east 88 poles crossing a branch of Cranberry to a chestnut and service N 55 E 136 poles crossing a branch to a poplar & service S 35 E 16 poles crossing a branch to a white oak and black oak, N 75 E 240 poles to a poplar and chestnut on a flat marked "H M" on waters of Cranberry N 3 W 380 poles crossing a creek of Gauley at 280 poles to a sugar tree and white oak N 40 E 48 poles to a hickory and poplar on the top of a ridge, N 10 W 516 poles to a chestnut and two sugar trees S 45 W 195 poles crossing a creek to a poplar on top of a ridge N 55 W 64 poles to a chestnut on the top of a ridge N 80 W 44 poles to a black oak & white oak, N 40 W 66 poles to a black oak yellow lynn and sugar tree on a little knob above the river, S. 60 W 40 poles to a large chestnut and dogwood N 85 W 52 po's to a large black oak on a hillside near the top. W 34 poles to a chestnut oak & gum, N 75 W 124 poles to a chestnut on top of a ridge near a fork N 2,032 poles to a white oak at the head of a hollow N 65 W 144
181 poles to a white oak and poplar on a hillside N 25 E 50 poles crossing Gauly river below an island to 3 small white oaks and a maple on the bank and on a line of Lane's bottom survey and runn'g with the same up the river S 25 E 28 poles, N 76

E. 50 po. to a sugar tree opposite to island and leaving the river with the same N 15 E 50 poles to a large chestnut corner to Sam'l Mathews with Mathews N 70 E 264 poles to a red oak & maple on a ridge N 25 E 572 po crossi'g Cherry creek to a large chestnut oak N 42 E 224 poles to a black oak near the top of a knob corner to a survey of 570 acres made for Alexander Welch on said line leaving Mathews and with Welch S 10 E 90 poles to 3 chestnuts on the top of a hill S 70 E 132 poles to a large poplar white oak and maple N 60 E 20 poles to two white oaks & a maple at Maze's road N 40 E 164 po cross'ng Glade creek at 130 po to a white oak E 60 poles to a chestnut & dogwood on a low ridge S 35 E 64 poles to a large white oak on a flat N 75 E 56 poles to a maple & chestnut oak on the top of the river ridge N 55 E 34 poles to a forked chestnut N 15 E 160 poles to a forked cherry tree and white walnut S 37 E 18 poles to a chestnut in edge of Laurel N 55 E 30 poles crossing the upper Glade run near the river and below the falls in said run to a maple N 25 W 110 po to 2 white oaks corner to the same and a survey made for Gilliand and Abner Hamilton of 752 acres and with the latter N 25 W 42 poles to two poplars on Harrison county line since Randolph and leaving Hamilton
182 and runn'g with said county line S 55 E 2900 poles to pointers on said line leaving said line south 4930 poles to the beginn'g excepting out of said described tract of land the following surveys included within the boundaries of said tract exclusive of the said quantity of 153,900 acres) to wit a survey of George Clendenen's of 400 acres on Cherry Tree bottom one survey for Sam'l Frazier's for 146 acres on both sides of the road that leads from Sinkey creek to Cherry Tree bottom also one on the road that leads from Cherry Tree bottom to Gauly river at Crain's Sangery camp containing 100 acres, one of 150 acres includ'g a sugar tree flat and walnut ground on both sides of said road, also 190 acres in the forks of Laurel creek including a knob known by the Sugar Tree knob, and one for James Maze for 190 acres about one mile northwest of Cherry Tree bottom on a ridge called the Horse ridge also one of 150 acres on a ridge south of Williams river and on a road that leads from Cherry Tree river to Williams bottom, also 280 acres of land on Williams river including Williams bottom, also one for Phillip Hall and Henry Stockwell of 500 acres between Gauly river and Williams river also one of 450 acres on a ridge on the south side of Williams river on the road that leads from Williams bottom to Cranberry creek one for James Edger of 643 acres on a flat ridge between Cherry Tree bottom and Laurel creek on the old road, one of 195 acres on the old road about one mile south of
183 Laurel creek including both sides of said road also one of 83 acres on Laurel creek where said old road crosses the creek also an entry made by Henry Stockwell of 80 acres on the right hand fork of Cherry Tree river above where James Maye lived about five miles, also Dominick Donnally's entry of 200 acres to begin at the foot of a knob 2½ miles from Cherry Tree bottom on the dividing ridge between Cherry and Cranberry to include chiefly branches of Cranberry, also 120 acres to begin about 3 or 4 miles

from Cherry Tree bottom on said ridge about 1½ miles further up said ridge to include the waters of Cranberry also 200 acres described by James Gilliand on waters of Cranberry near a place known by Rock Camp. Also Saul Taylor's entry of 54 acres to begin adjoin-g his survey of 146 acres on the road to Cherry Tree bottom to join said survey on the west and to include a mill seat on Laurel creek. Also 400 acres for Robert Young on head branches of Spring creek and heads of Cherry Tree river also 400 acres for Jacob Huntspeller and James Eccles on waters of Spring to begin ¾ of a mile to the right hand of the road that leads from Sinking creek to Cherry Tree bottom, begin-g at a hickory and lynn at the Elk lick & extending towards Manner's bottom for quantity and towards the Gravelly spring. Also Saul Lewis & Francis Ludding-
ton 285 acres on the road that leads from Cherry Tree bottom to
Williams bottom to begin at the top of the mountain north
184 of Cranberry and to extend north & west along both sides
of the road to include a camp and place known by the Buffalo Calf ground. Also 400 acres to begin at the head of the bottom north side of Gauly river and extend up Gauly river and out from the river for quantity also 200 acres to begin at the lower end of said bottom and thence down the river and out from the same and to extend up and round an entry of 200 acres made for Joseph Maye to join their above entry for quantity. Also 300 acres on Cranberry about 6 or 7 miles above where Williams road crosses Cranberry to begin at the lower end of the bottom and to extend up both sides of the river to include the bottom on both sides for quantity. Also 400 acres to begin near the top of the ridge that points down on the fork of Cherry Tree about half a mile from the fork above Cherry Tree bottom and about 1½ miles above said bottom and to extend up the ridge for quantity. Also 400 acres on Gauly river to join the upper end of the entry of 400 acres above described to include bottom on both sides of the river and to extend up said river to join the Harrison line for quantity also William Hume's entry of 400 acres at the Graveley spring on the road that leads to Cherry bottom begini-g at a beech tree at the head of the spring and runn-g west and thence including the head branches of Cherry Tree for quantity. Also 400 acres lying on a mountain at the head of the right
hand fork of Spring creek that forks at the head of Mannen's
bottom and on the right hand fork from the place
185 called the Panther camp including a flat on the mountain at the head of said fork. Also 200 acres on the mountain on the north side of Spencer Cooper's survey on the road that leads from Sinking creek to Cherry Tree bottom at the forks of the road where the new road leaves the old road including a flat and said forks of said road Also Joseph May's and Thomas Edgar's entry of 200 acres to begin about 20 poles south of the head of a spring the road crosses about 30 poles from its head and about one mile from Cherry Tree bottom Said spring is a branch of a run which empties into Cherry Tree near a lick a small distance above Maye's sugar camp and to run nearly west to include a flat ridge and down the big ridge for quantity. Also John McMillan's entry

of 50 acris on the left-hand fork of Spring creek about a ½ mile to the right hand of the road that leads from John McMillan's to the Cherry Tree bottom to join an entry made for William Hunes on the east and to extend easterly to include a tree marked J M C and a large quantity of sugar trees, all of which surveys are not intended to be hereby conveyed but the same are exceptied and reserved (or meant so to be) in the same and in as full and effective a manner as the same are exceptied in the hereinafter recited patent and indenture (which tract or parcel of land the Commonwealth of Virginia by patent bearing date the 21st day of March A D 1795, recorded at the city of Richmond in Book No 31 page 400,
186 granted unto Robert Morris in fee simple (except as therein excepted) And the said Robert Morris and Mary his wife by indenture bearing date 13th of March A D 1797, recorded at Richmond as aforesaid on the 14th of November A D 1797, and also recorded in the office of the clerk of Greenbrier county aforesaid on the 18th of June 1841 in Book No 15 pages 234 to 246 did, *inter alia* grant or convey the same tract or parcel of land unto Wm Cramond in fee, and the said Wm Cramond & wife by a certain indenture endorsed on said last recited deed bearing date on the 28 of October A D 1814, recorded in the clerk's office of Greenbrier county aforesaid on the 18th of June 1841 in Book No 15 page 247, did grant and convey said tract *inter alia* unto Thomas Astley in fee And the said Thomas Astley being so thereof seized died intestate leaving issue only one daughter named Sophia wife of Littleton Kirkpatrick to whom the said tract or parcel of land *inter alia* descended and came. And the said Littleton Kirkpatrick and the said Sophia his wife (late Sophia Astley) and Sarah H. Astley widow of the said Thomas Astley, by a certain indenture (also endorsed on said recited deed) bearing date the 10th day of December A D 1840 recorded in the clerk's office of Greenbrier county aforesaid on the 18th of June 1841 in Book No 15 page 248, did grant and convey said tract of land *inter alia* unto the said Henry Cramond in fee. And by the said recited patent and the several indentures reference thereto respectively being had will fully
187 appear, together with all and singular the ways, woods, waters, water-courses, roads lanes passages mines minerals, fossils quar-ies ores marshes, rights liberties privileges heredit--ments and appurtenances whatsoever unto the hereby-granted premises belonging or in anywise appertaining and the reversions and remainders rents issues and profits thereof, and all the estate right title and interest property claim and demand whatsoever of him the said Henry Cramond either in law or equity or otherwise howsoever in and to and out of the same and every part & parcel thereof. To have and to hold the same tract piece or parcel of land hereinabove described hereditaments or premises hereby granted or mentioned and intended so to be with the appurtenances (except as before excepted) unto the said John Williams his heirs and assigns to and for the only proper use and behoof of the said John Williams his heirs and assigns forever, and the said Henry Cramond his heirs and all and singular the heredit-ments and premises hereby granted

or mentioned and intended so to be with the appurtenances unto the said John Williams his heirs and assigns (except as regards the quantity and situation of the said tract) against him the said Henry Cramond his heirs and against all other person or persons whomsoever lawfully claiming or to claim by from or under him them or any of them *or any of them* or by from or under the said
188 Thomas Astley, and against the heirs of the said Robert Morris deceased, shall and will warrant and forever defend.

In witness whereof the said parties have interchang-able set their hands and seals hereunto dated the day and year first above written.

HENRY CRAMOND. [SEAL.]

Sealed & delivered in the presence of us—
JAS. MAGUIRE.
JOHN BURNS.
JOEL COOK.

Received the day of the date of the foregoing written indenture, of the therein-named John Williams, the sum of thirteen thousand dollars, being the full consideration money therein mentioned.

HENRY CRAMOND.

Witnesses at signing—
JAS. MAGUIRE.
JOHN BURNS.
JOEL COOK.

CITY OF PHILADELPHIA, } *ss:*
State of Pennsylvania, }

We, Joel Cook and John Burns, aldermen and justices of the peace in and for the city of Philadelphia, in the State of Pennsylvania, do hereby certify that Henry Cramond, party to the foregoing deed dated the 21st day of Dec., 1842, personally appeared before us, in our said city, and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgment to the
189 clerk of the county of Greenbrier, Virginia, in order that the said deed may be recorded.

Given under our hands and seals this 21 day of December, A. D. 1842.

JOEL COOK, [SEAL.]
Aldr. & ex Officio a Justice of the Peace.
JOHN BURNS, [SEAL.]
Aldr. & ex Officio a Justice of the Peace.

CITY AND COUNTY OF PHILADELPHIA, } *ss:*
State of Pennsylvania, }

To all to whom these presents shall come:

I, Richard Palmer, Jun., Esq., prothonotary of the court of common pleas for the county of Philadelphia, do hereby certify that

Joel Cook and John Burns, Esquires, before whom the foregoing indenture was acknowledged, are now and were at the time of taking said acknowledgement alderman and *ex officio* justices of the peace in and for the city of Philadelphia, and to their acts full faith and credit are given.

In testimony whereof I have hereunto set my hand and
[SEAL.] seal of office this 21st day of December, A. D. 1842.

R. PALMER,
Prothonotary.

GREENBRIER COUNTY CLERK'S OFFICE,
April 29th, 1843.

This deed was presented in the office, with authenticated certificate endorsed thereon certifying the due acknowledgement thereof by the vendor. The same is admitted to record accordingly.

Teste: JOHN MATTHEWS, *C. G. C.*

A copy.
Teste: L. B. DELLICKER, *Clerk.*

A copy from the record.

MARK L. SPOTTS, *Clerk.*

190 EXHIBIT "No. 39."

This indenture made and entered into this 21st day of February in the year one thousand eight hundred and fifty, between John Williams and Jane his wife of the county of Greenbrier and State of Virginia of the one part and Allen T Caperton of the county of Monroe and State aforesaid of the other part. Witnesseth, that the said John Williams and Jane his wife for and in consideration of the sum of one dollar to them in hand paid by the said Allen T Caperton the receipt whereof is hereby acknowledged, have granted bargained sold released and confirmed, and by these presents doth grant sell bargain and confirm unto the said Allen T Caperton his heirs and assigns a certain tract or parcel of land containing seventy-seven thousand one hundred and four acres, lying and being the greater portion in Nicholas county and the balance in Greenbrier county (it being a part of a large survey of one hundred and fifty-three thousand nine hundred acres surveyed for Hudson Martin and granted to Robert Morris by the Commonwealth of Virginia on the 26th day of March 1795, and which grant embraced several exceptions of prior claims and after deducting these claims mentioned in said grant which are within the boundary lines off and surveyed for said Caperton leaves the said 77104 acris and which exceptions are hereinafter mentioned as designated on said grant to said Robert
Morris and the said 77104 acris embraces a part of the waters
191 of Cherry Cranberry Williams and Gauly rivers and is bounded as follows to wit: Beginning, at a small poplar at the forks of said Cherry river corner to Charles McClung and Thomas M McCantic and with N 50 E 10 poles to a sugar tree N 7 E 7½ poles to a water birch N 13 W 12 poles to a small maple, N 30 W 3 poles

to a bunch of water birches and sycamore N 49 W 16 poles to a small double birch and locust N 15 W 8½ poles to a dogwood N 20 W 18 poles to a birch — sas-afras N 20 E 13 poles to a spruce pine N 60 W 6 poles to yellow pine pointers op-osite to the mouth of Spencer's run west 95 poles to a chestnut with sprouts S 50 W 9 poles to a black and small white oak on hillside S 62 W 245 poles to a forked maple and a dogwood by a road N 42 W 228 poles to a sugar on a hillside N 84 W 356 poles to a large red oak, S 10 W 80 poles to a chestnut S 40 W 46 poles to an ash on a bench, S 60 E 34 poles to a chestnut on top of a mountain and leaving McClung and McClintic S 12 W 63 poles to a sugar and hickory on side of a mountain S 37 W 76 poles to a white — on a hillside near Cherry river and down the same N 87 W 22 poles to a maple N 65 W 79 poles to a beech or cotton N 20 W 48 poles to a small beech and birch in Laurel, N 15 E 42 poles to a large poplar in Laurel N 32 E 94 poles to a white oak on side of mountain N 40 W 566 poles to a double maple and sugar on hillside N 10 E 62 poles passing Duck lick to a poplar & beech in bottom, N 45 W 80 poles crossing run near mouth to a spruce and gum N 28 W 46 poles to a poplar and chestnut
192 near a spruce grove S 75 W 64 poles to 2 spruce pines N 75 W 84 poles to a poplar on side of mountain on patent line about 40 poles from river and with the patent line N 10 W 406 poles to a poplar and maple on flat, S 70 W 130 poles to a sugar and maple on hillside north 199 poles to a white oak on narrow ridge near Gauly river, N 50 E 202 poles to fallen sugar and hickory N 35 W 68 poles to a white oak on side of hill, N 35 E 90 poles crossing said Cranberry river near the mouth to a stake on bank, N 42 W 12 poles to a chestnut stump by Taylor's house N 72 E 74 poles to a maple and red oak, S 70 E 28 poles to a dogwood black and white oak saplings N 80 E 34 poles to a stake in a field, N 88 E 88 poles to a double poplar, S 80 E 60 poles to a chestnut on top of ridge, N 35 E 52 poles to a poplar and dogwood S 73 E 92 poles to two beeches in a flat, N 67 E 66 poles to a black oak and poplar S 65 E 154 poles to a hickory and yellow lynn on a flat N 60 E 58 poles to a large poplar and white oak N 15 E 58 poles to a sugar on a large flat N 67 E 110 poles to a yellow lynn on a flat N 50 E 57 poles to a large chestnut on a point east 88 poles passing a branch of Cranberry to a chestnut and sarvice, N 55 E 136 poles to a poplar sarvice on Laurel, S 35 E 10 poles to a white oak and black oak on edge of said Laurell, N 75 E 240 poles to a poplar and chestnut marked H M, N 3 W 392 poles crossing a branch of Gauly to a white oak and sugar, N 40 E 50 poles to a poplar on ridge, N 10 W 516 poles crossing Laurel creek to a chestnut and two sugar
193 trees S 45 W 216 poles × said creek to a poplar on top of ridge, N 55 W 64 poles to a chestnut, No 80 W 44 poles to a black oak and white oak, N 40 W 66 poles to a sugar on a knob above the river S 60 W 40 poles to a chestnut and dogwood N 85 W 52 poles to a black oak and white oak near the top of hill, west 34 poles to a chestnut and lynn N 75 W 134 poles to a chestnut on top of ridge near a fork N 20 W 32 poles to a white oak at the head of a hollow, N 65 W 162 poles to a poplar on west hillside, N 25 E

88 poles crossing Gauly river below island to three oaks and maples on bank on a line of the same bottom survey and with the same up the river S 72 E 48 polis & S 79 E 32 poles to a sugar tree opposite island and leaving the river and with said survey N 15 E 60 poles to a large chestnut corner to the Mathews tract and with N 70 E 299 poles to a red oak & maple on a ridge N 25 E 572 poles crossing Cherry creek to a large chestnut oak, N 42 E 272 poles to a black oak on side of knob near the top, corner to a survey of 570 acres made for Alexander Welch and leaving Mathews and with Welch S 10 E 100 poles to three chestnuts on top of hill S 70 E 144 poles to a large poplar white oak & maple, N 60 E 20 polis to a white oak & maple at Maze road N 40 E 166 poles crossing Glade creek at 130 polis to a white oak east 76 poles to a chestnut — a maple and chestnut oak on top of River ridge No 55 E 34 poles to a forked chestnut N 15 E 208 poles to a forked cherry and white walnut
194 S 37 E 58 poles a chestnut in edge of Laurel, N 55 E 30 poles crossing Upper Glade run, below the falls on said run, N 25 W 110 poles to a white oak corner to same and a survey made for Gillilan and Abner Hamilton of 752 acres and with the latter N 25 E 439 poles to two poplars on the county line of Harrison before the formation of Randolph and leaving Hamilton and with said line S 55 E 2900 poles crossing Gauly and Williams rivers to pointers in said line and leaving said line and with said patent south 2485 poles crossing said Cranberry river to pointers on said line and leaving said line S 86 W 2804 poles crossing the north fork of Cherry river to the beginning. The exceptions are as follows within the above boundaries and which are part of the exceptions in the original grant to wit, one hundred acres for Samuel Taylor on the road which leads from Cherrystone bottom to Gauly river at Crain's crossing also one of —— fifty acres on said road on both sides of the same including a sugar tree of last Also one for James Maze of one hundred and on a ridge south of Williams river on a road that leads from Cherry bottom to Williams bottom. Also two hundred and eighty acres on Williams river including Williams bottom Also one for Philip Hall and Henry Stockwell of five hundred acres between Williams and Gauly rivers Also one of four hundred and fifty acres on a ridge south of Williams river on the road that leads from Williams bottom to Cranberry creek or river Also Dominick Donnaly's entry of two hundred
195 acres to begin at the foot of a knob about two and a half miles on the dividing ridge between Cher-y and Cranberry rivers supposed to be where Abraham Hinkle now lives Also one hundred and twenty acres about and above the first on said ridge to include waters of Cranberry supposed to be where James Spencer now lives. Also two hundred acres described by James Gillian on the waters of Cranberry near a place known by the name of Rook camp Also Samuel Lewis and Francis Ludington two hundred and eighty-five acres on the road leading from Cherry Tree bottom to Williams bottom to begin at the top of the mountain north of Cranberry and to extend northwest on both sides of said road and to include a camp and place known as the Buffalo camp ground.

Also four hundred acres to begin north side of Gauley river opposite the mouth of Williams river and to extend up and out from Gauley river for quantity. Also two hundred acres to begin at lower end of bottom and thence down the river and out from the same and to extend up arround an entry of two hundred acres made for Joseph Maze and to adjoin then above entry for quantity. Also three hundred acres on Cranberry river about six or seven miles above where Williams road crosses Cranberry to begin at the lower end of bottom and to extend up both sides of the river and to include the bottom on both sides for quantity. Also four hundred acres on Gauley river to join then upper entry of 400 acres as above described to include bottom on both sides of the
196 *of the* same and to extend up said river to join the said Harrison county line for quantity, and also three hundred and forty-six acres a part of a survey of four hundred acres on the ridge in the forks of Cherry river now Allen Spencer's all of which exceptions or surveys are not intended hereby to be conveyed but the same are excepted and reserved or me-nt so to be in the same and in as full and effectual (line so worn as not to be read) Morris which chain of title will more fully appear by reference to the clerk's office of the county of Greenbrier. Together with all and singular the ways, woods, waters, water-courses mines minerals fossils, qua'-ries caves marshes, rights liberties privileges hereditaments and appurtanances whatsoever to the hereby granted premises belonging or in anywise appertaining and all the estate right title and interest property claim and demand whatsoever of them the said John Williams and Jane his wife either in law or in equity or otherwise howsoever of in and to and out of the same, and every part and parcel thereof to have and to hold the said tract piece of parcel of land hereinabove described hereditaments and premises hereby granted with the appurtenances unto the said Allen T. Caperton his heirs and assigns forever and the said John Williams and Jane his wife their heirs all and singular the hereditaments and premises hereby granted with the appurtenances unto the said Allen T Caperton his heirs and assigns against them the said John
197 Williams and Jane his wife their heirs and against all and every person or persons whomsoever, lawfully claiming or to claim by whom or under them or any of them and against all persons whatsoever shall and will war-ent and forever defend

In witness whereof the said John Williams and Jane his wife hath hereunto set their hands and affixed their seals this day and year first above written

JOHN WILLIAMS [SEAL]
JANE WILLIAMS [SEAL]

GREENBRIER COUNTY, *To wit:*

We, Charles McClung and Thomas McClintic, justice- of — peace in and for the said county of Greenbrier, within the Commonwealth of Virginia, do hereby certify that John Williams and Jane Williams, his wife, parties to a certain deed bearing date on the 21st day of February, 1850, and hereunto annexed, personally appeared be-

fore the subscribers, within our said county, and acknowledged the same to be their act and deed and desired us to certify said acknowledgement to the clerk of the county court of Nicholas county in order that the same may be admitted to record. We further certify that we examined the above Jane Williams, wife of the said John Williams, separate, privily, and apart from her said husband, and, having the said deed fully explained by us to her, she declared that she had willingly signed, sealed, and delivered the same and that she was not induced so to do *so* through any threats from or fears of her said husband, and that she did not wish to retract the
198 same.

In witness whereof we have hereunto set our hands and affixed our seals this 21st day of February, 1850.

CHARLES McCLUNG. [SEAL.]
THOS. M. McCLINTIC. [SEAL.]

NICHOLAS COUNTY COURT,
CLERK'S OFFICE, *April 5th*, 1885.

This deed of bargain and sale from John Williams and Jane, his wife, to Allen T. Caperton, of Greenbrier counties, was this day presented in my office duly certified, and the said deed, together with the certificate thereon, is accordingly admitted to record.

Teste: R. HAMILTON, *Clerk.*

199 "EXHIBIT NO. 12."

Beverly Randolph Esquire governor of the Commonwealth of Virginia. To all to whom these presents shall come Greeting

Know ye, that by virtue and in consideration of part of a land office Treasury warrent number twenty-one thousand three hundred and forty-five, issued the thirteenth day of December one thousand seven hundred and eighty-three. There is granted by the said Commonwealth unto Abner Cloud assignee of Lewis Franklin a certain tract or parcel of land containing five thousand acres by survey bearing date the fifth day of August one thousand seven hundred and eighty-six. Lying and being in the county of Harrison on the waters of Gauley river adjoining lands of John Young and John Dickinson and bounded as follows to wit: Beginning at a sugar tree and elkwood corner to said Young's survey number three number four, and number eight and running thence in a line of survey number eight and by a line of John Dickinson's survey number one south 55° east 1000 poles to a sugar tree corner to said Dickinson, thence south 35° west 800 poles to a post in the county line thence along said county line north 55° west 1000 poles crossing two branches of Gauly river to a post in the above said county line thence north 35° east 800 poles to the beginning, with its appurtenances to have and to hold the said tract or parcel of land with its appurtenances to the said Abner Cloud and his heirs forever.

In witness whereof the said Beverly Randolph Esquire, gov-
200 ernor of the Commonwealth of Virginia hath hereunto set his hand and caused the lesser seal of the Commonwealth of

Virginia to be affixed at Richmond on the 10th day of March in the year of our Lord one thousand seven hundred and ninety and of the Commonwealth the fourteenth.

BEVERLY RANDOLPH.

I, William P. M. Kennan, register of Virginia land office, do certify that the foregoing is a true copy from the records of said office.

Given under my hand and seal of office, at Richmond, this 6th day of May, A. D. 1874.

WILLIAM BUKELLMAN,
Reg. Va. L. Office.

201 EXHIBIT "No. 1."

Copies of Orders.

September Term, 1857.

Order Appointing J. G. Stephenson Com.

At a circuit superior court of law and chancery held for the county of Nicholas, at the court-house thereof, on Wednesday, the 6th day of September, 1837.

John S. Stephenson is appointed commissioner of delinquent lands for this county, who, together with David Stephenson, Abner Stephenson, John McHamilton, and Addison McLaughlin, his securities, entered into bond in the penalty of $1,000, conditioned according to law, and took the oath prescribed by law.

A copy.
Teste: A. F. RADER, *Clerk.*

Order Appointing Alex. Brown Com'r.

April Term, 1841.

At a circuit superior court of law and chancery held for the county of Nicholas, at the court-house thereof, on April 9th, 1841.

Alexander Brown was this day appointed commissioner of delinquent and forfeited lands for this county, who took the oath prescribed by law and entered into bond with John Hill, his security, in the penalty of $1,000, conditioned according to law, which bond was duly acknowledged and ordered to be filed.

A copy.
Teste: A. F. RADER, *Clerk.*

202 *Young & Hyde Land Ordered to be Sold.*

September Term, 1841, Nicholas County Circuit Superior Court.

SEPTEMBER 7TH, 1841.

The commissioners of forfeited and delinquent lands for the county of Nicholas this day made report in writing that four tracts of land

containing, the three first, 1,000 acres each and, the fourth, 1,260 acres, lying in said county and patented to Robert Young and Benjamin Hyde on the 7th and 8th days of September, 1792, *and* forfeited for failing to enter the same on the commissioner's books and payment of the taxes thereon. * * * All of which will more fully appear by reference to said reports, which are ordered to be filed. It is therefore ordered that said commissioner do make sale of said tracts of land hereinbefore mentioned, according to and upon the terms prescribed by law, on the 2nd Tuesday in November, and that he divide the same into such lots as he may deem most advantageous to effect a sale thereof.

A copy.
Teste: A. F. RADER, *Cl'k.*

John Brown Appointed Com'r.

September Term, 1841, Nicholas Circuit Superior Court.

SEPTEMBER 9TH, 1841.

John Brown is this day appointed commissioner of forfeited and delinquent lands for this county in room of John G. Stephenson removed, and thereupon the said John Brown, with Israel Brown and William Hutchinson, his securities, entered into bond for
203 the faithful performance of his duties according to law, and thereupon he took the oath of office.

A copy.
Teste: A. F. RADER, *Clerk.*

Young & Hyde Land Sale Conf'd.

April Term, 1842, Nicholas Circuit Superior Court.

APRIL 9, 1842.

In pursuance of a former order of court the commissioners of forfeited and delinquent lands for the county of Nicholas this day made a report of sale of four tracts, Nos. 1 and 2 and 9, containing 1,000 acres each, and No. 10, containing twelve hundred and sixty acres, forfeited and sold in the name of Robert Young and Benjamin Hyde, and it appear-g that John Williams became the purchaser of the said four tracts of land, to wit, No. 1, at the price of eighteen dollars; No. 2, at the price of twenty-two dollars; No. 9, at the price of eighteen dollars, and No. 10, at the price of eighteen dollars, and that he paid one-fourth thereof in hand to the commissioner and gave his bond for the residue, which report, being seen and examined, is confirmed; and it is ordered that the commissioner, after retaining the expenses attending the surveying and the sale of said lands, together with his own charges and the fees, when ascertained, pay over the surplus, if any, according to law, into the treasury.

A copy.
Teste: A. F. RADER, *Clerk.*

204 *McCausland Tract. Order of Sale.*

September Term, 1841, Nicholas Circuit Superior Court.

SEPTEMBER 7TH, 1841.

The commissioners of forfeited and delinquent lands for Nicholas county this day made report in writing that three tracts of land containing 1,000 acres each, lying in said county, one of which was patented to Humphrey McCausland on the 7th day of September, 1792, and the other two on the 8th of September, 1792, *and* forfeited for failing to enter the same on the commissioners' books and payment of the taxes thereon, all of which will more fully appear by reference to said reports, which are ordered to be filed, it is therefore ordered that said commissioner do make sale of said tracts of land hereinbefore mentioned, according to and upon the terms prescribed by law, on the 2d Tuesday in November next, and that he divide the same into such lots as he may deem most advantageous to effect the sale thereof.

A copy.
Teste: A. F. RADER, *Clerk.*

205 *McCausland Tract. Sale Confirmed.*

April Term, 1842, Nicholas Circuit Superior Court.

APRIL 9TH, 1842.

The commissioners of forfeited and delinquent lands for the county of Nicholas this day made a report, in pursuance of a former order of court, of the sale of three tracts of land, Nos. 3, 4, and 6, containing one thousand acres each, forfeited and sold in the name of Humphrey McCausland; and it appearing that John Williams became the purchaser of said three tracts, to wit, No. 3, at fifty-one dollars; No. 4, at fifty-one dollars, and No. 6, at five dollars, and that he paid one-fourth thereof in hand to the commissioner and gave his bond for the residue, which report, having been seen and examined, is confirmed, *and* it is ordered that the commissioner, after retaining the expenses attending the surveying and sale of said land, together with his own charges and the clerk's fees, when ascertained, pay the surplus into the treasury, according to law.

A copy.
Teste: A. F. RADER, *Clerk.*

Drumond Tract. Order of Sale.

September Term, 1841, Nicholas Circuit Superior Court.

SEPTEMBER 7TH, 1841.

206 The commissioners of forfeited and delinquent lands for Nicholas county this day made report in writing that a tract of 1,000 acres of land and lying in said county and patented

to William Drumond on the 3d day of March, 1792, *and* forfeited for failing to enter the same on the commissioner's books and payment of taxes thereof—

All of which will more fully appear by reference to said reports, which are ordered to be filed; it is therefore ordered that said commissioner do make sale of said tract of land hereinbefore mentioned, according to and upon the terms prescribed by law, on the 2d Tuesday in November next, and that he divide the same into such lots as he may deem most advantageous to effect the sale thereof.

A copy.
Teste: A. F. RADER, *Clerk.*

Drumond Tract. Sale Confirmed.

April Term, 1842, Nicholas Circuit Superior Court.

APRIL 9TH, 1842.

In pursuance of a former order of court the commissioners of forfeited and delinquent lands for the county of Nicholas this day made a report in writing of the sale of a tract of one thousand acres of land in said county, No. 5, forfeited and sold in the name of William Drumond; and it appear'g that John Williams became the purchaser of said land at the price of thirty-nine dollars, and that he paid one-fourth thereof in hand to the commissioner and gave his bonds for the residue, which report, being seen and examined, is confirmed, *and* it is ordered that the commissioner,
207 after retaining the expenses attending the surveying and sale of said land, together with his own charges and the clerk's fees, when ascertained, pay over the surplus, according to law, into the treasury.

A copy.
Teste: A. F. RADER, *Clerk.*

Ryburn Tract. Order of Sale.

September Term, 1841, Nicholas Circuit Superior Court.

SEPTEMBER 7TH, 1841.

The commission of forfeited and delinquent land for Nicholas county this day made report in writing that two tracts of land, containing 1,000 acres each, lying in said county, and patented to John Reyburn on the 3rd day of July, 1792, are forfeited for failing to enter the same on the commissioner's books and payment of taxes thereof, all of which will more fully appear by reference to said reports, which are ordered to be filed, it is therefore ordered that said commission- do make sale of said tract of land hereinbefore mentioned, according to and upon the terms prescribed by law, on the 2d Tuesday in November next, and that he divide the same into such lots as he may deem advantageous to effect a sale thereof.

A copy.
Teste: A. F. RADER, *Clerk.*

208 *Rayburn Tract. Sale Confirmed.*

April Term, 1842, Nicholas Circuit Superior Court.

APRIL 9, 1842.

The commission of forfeited and delinquent lands for the county of Nicholas this day made a report, in pu-suance to a former order of the court, of the sale of two tracts of land, Nos. 7 & 8, containing 1,000 acres each, forfeited and sold in the name of John Reyburn; and it appear-g that John Williams became the purchaser of said lands, to wit, No. 7 at the price of twenty dollars and No. 8 at the price of twenty dollars, and that he paid one-fourth thereof in hand to the commissioner and gave his bonds for the residue, which report, being seen and examined, is confirmed, *and* it is ordered that the commissioner, after reta-ng the expenses attending the surveying and the sale of said —, together with his own charges and the clerk's fees, when ascertained, pay over the surplus, according to law, into the treasury.

A copy.
Teste: A. F. RADER, *Clerk.*

Staples Tract. Order of Sale.

April Term, 1841, Nicholas Circuit Superior Court.

APRIL 9, 1841.

And the said commissioner of forfeited and delinquent land this day made report that a tract of land of 1,703 acres, surveyed for Hudson Martin and patented in the name of John Staples, is
209 forfeited for not being entered on the commissioner's books and payment of the taxes due thereof. It is therefore ordered that said commissioner do make sale of said tract of land, according to and upon the terms prescribed by law, on the 2d Tuesday in August next, and that he divide the same into such lots as he may deem exped-ent to effect an advantageous sale thereof.

A copy.
Teste: A. F. RADER, *Clerk.*

Staples Tract. Sale Confirmed.

September Term, 1841, Nicholas Circuit Superior Court.

SEPTEMBER 9TH, 1841.

The commissioner of forfeited and delinquent lands this day made report of the sale of a tract of 1,703 acres of land in the name of John Staples pursuant to a former order of the court, and that the same was purchased by John Williams at the price of twenty-five dollars, and has also returned an account of the expenses of surveying the land and other expenses and charges incidental to the sale thereof, and, the court having inspected the same and the said account not

being verified by affidavit, the court is of opinion that the principal charges are ex*ho*bitant and unreasonable; that the surveyor's fees should be reduced twenty-five per centum, making the charges amount to fifteen dollars and seven cents, which is hereby
210 allowed, and the commissioner's charges be reduced to fifteen dollars in full for all his services, which, with the charges of the assistant chain-carriers and other hands, amounting to eleven dollars, and two dollars the printer's charges, amounts in whole to forty-three dollars and seven cents; to which must be added the clerk's fees when ascertained. It is therefore ordered that the sale be confirmed; that the commission- retain out of the proceeds of sale the aforesaid sum of forty-three dollars and seven cents and the clerk's fees, when ascertained, and pay over the residue into the treasury according to law, and that a copy of this order be furnished to the auditor of public accounts.

A copy.
Teste: A. F. RADER, *Clerk.*

Gaines Tract. Order of Sale.

September Term, 1841, Nicholas Circuit Superior Court.

SEPTEMBER 7TH, 1841.

The commissioner of forfeited and delinquent land for the county of Nicholas this day made report in writing that a tract of land of 300 acres in said county and patented to William F. Gaines, ass'ee of Francis Luddington, on the 26 day of July, 1798, is also forfeited for failing to enter the same on the commissioner's book and payment of the taxes thereof; all of which will more fully appear by reference to said report, which is ordered to be filed. It is therefore ordered that the said commissioner do make sale of said
211 tracts of land hereinbefore mentioned, according to and upon the terms prescribed by law, on the 2nd Tuesday in November next, and that he divide the same into such lots as he may deem most advantageous to effect sale thereof.

A copy.
Teste: A. F. RADER, *Clerk.*

Gaines Tract. Sale Confirmed.

April Term, 1842, Nicholas Circuit Superior Court.

APRIL 9, 1842.

The commission of forfeited and delinquent lands for the county of Nicholas this day made report of the sale of a tract of land in said county forfeited to the Commonwealth, containing three hundred acres and forfeited in the name of William F. Gaines, in pursuance of a former order of the court; and it appearing that John Williams became the purchaser of said land at the price of thirty dollars and fifty cents, and that he paid one-fourth thereof in hand to the commissioner and gave his bonds for the residue, which re-

port, being seen and examined, is confirmed, *and* it is ordered that the commissioner, after retaining the expenses attending the surveying and the sale of the said land, together with his own charges and the clerk's fees when ascertained, pay over the surplus, according to law, into the treasury.

A copy.
Teste: A. F. RADER, *Clerk.*

212 *Penton Tract. Order of Sale.*

April Term, 1842, Nicholas Circuit Superior Court.

APRIL 8TH, 1842.

The commissioner of forfeited and delinquent lands for the county of Nicholas this day made report that four tracts of land, containing 2,000 acres each, lying in said county, on the north branches of Gauley river and patented to Abram Penton, assignee of John Young, who was assignee of David Anderson, on the 4 & 5 days of February, 1789, *is* forfeited for failing to enter the same in the commissioners' books and for the non-payment of the taxes thereon. It is therefore ordered that the said commissioners or one of them make sale of the said lands at the court-house of Nicholas county on the first day of June court next to be holden for said county, in the manner and upon the terms prescribed by law, and that he divide the same into such lots as he may deem most advantageous to effect an advantageous sale thereof, and that he make report to this court.

A copy.
Teste: A. F. RADER, *Clerk.*

213 *Penton Tract. Sale Conf'd.*

September Term, 1842, Nicholas Circuit Superior Court.

SEPTEMBER 9TH, 1842.

The commissioners of delinquent and forfeited lands for Nicholas county this day made report of the sale of lot No. 2, containing 900 acres, being the surplus of a survey of 2,000 acres, No. 2, after reserving a survey patented to James Dyer, Jr., and 50 acres patented to Isaac Duffield and John Given and forfeited in the name of Abner Penton, and it appearing that Austin Hollister became the purchaser thereof at the price of $12, and that he paid one-fourth thereof in hand to the commissioners and gave his bond for the residue—which report being seen and examined, the same is hereby confirmed—*and* it is ordered that the commissioner-, after retaining the expenses of surveying and the sale of said land, together with his own charges and the clerk's fee when ascertained, pay over the residue into the treasury according to law.

A copy.
Test: A. F. RADER, *Clerk.*

Cloud Tract. Order of Sale.

April Term, 1842, Nicholas Circuit Superior Court.

APRIL 8TH, 1842.

The commissioners of forfeited and delinquent lands for the county of Nicholas this day made a report that two tracts of
214 land containing 5,000 acres each, lying in said *in said* county, on Gauly river, and patented to Abram Cloud, assignee of Lewis Franklin, on the 10th day of March, 1790, are forfeited for failing to enter the same upon the commissioner's books and for the non-payment of the taxes due thereon. It is therefore ordered that the said commissioners or one of them make sale of the said lands at the court-house of Nicholas county on the first day of June court next to be holden for said county in the manner and upon the terms prescribed by law, and that he divide the same into such lots as he may deem most expedient to effect an advantageous sale thereof, and that he report to this court.

A copy.

Teste: A. F. RADER, *Clerk.*

Cloud Tract. Sale Confirmed.

September Term, 1842, Nicholas Circuit Superior Court.

SEPTEMBER 9TH, 1842.

The commissioners of delinquent and forfeited lands for Nicholas county this day made report of the sale of tract No. 2, containing 5,000 acres, delinquent and forfeited in the name of Abram Cloud, assignee of Lewis Franklin, and it appearing that Austin Hollister became the purchaser thereof at the price of $50, and that he paid one-fourth thereof in hand to the commissioners and gave his bond for the residue—which report, being seen and examined by
215 the court, is confirmed—*and* the same is ordered to be filed, and it is ordered that the commissioner, after retaining the expense attending the surveying and sale of said land, together with his own charges and the clerk's fees, when ascertained, pay over the residue into the treasury according to law.

Cloud Tract. Sale Confirmed.

Also the commissioners of forfeited and delinquent lands for Nicholas county this day made a report of the sale of lots Nos. 1 & 2, containing 2,500 acres each, parcels of survey No. 1, containing 5,000 acres, forfeited in the name of Abner Cloud, assignee of Lewis Franklin; and it appearing that John Williams became the purchaser of said lands, to wit: Lot No. 1 at the price of $31.50 and lot No. 2 at the price of $40.00; and that he paid one-fourth thereof in hand to the commissioner and gave his bonds for the residue thereof, which report, being seen and examined by the court, is confirmed,

and it is ordered that the commissioner, after retaining the expenses attending the surveying and sale of said lands, together with his charges and the clerk's fee, when ascertained, pay over the surplus, if any, into the treasury, according to law.

A copy.

Teste: A. F. RADER, *Clerk.*

Penton Tract. Order of Sale.

September Term, 1842, Nicholas Circuit Superior Court.

SEPTEMBER 9TH, 1842.

216 The said commissioners this day made report of a tract of land, lot No. 1, containing 2,000 acres, on both sides of Elk river, patented to Abner Penton, assignee of Jno. Young, assignee of David Anderson, on the 4th of February, 1789, and forfeited for the non-payment of taxes due thereon, as well as for not entering the same on the com'rs' books in the name of Abner Penton. It is therefore ordered that the com'r do sell the same at the court-house of Nicholas county on the first day of the next November court for said county, in the manner and upon the terms prescribed by law, and that he report the same to this court.

A copy.

Teste: A. F. RADER, *Clerk.*

Penton Tract. Sale Confirmed.

April Term, 1843, Nicholas Circuit Superior Court.

APRIL 7TH, 1843.

The commissioners of delinquent and forfeited lands for the county of Nicholas this day made report in pursuance of a former order of court of the sale of lot No. 1, containing 170 acres, and No. 2, containing 500 acres, being the residue of a tract of land No. 1, of 2,000 acres, patented to and forfeited in the name of Abner Penton, after platting out all interferences, as will more fully appear by reference to said report, which is ordered to be filed; and it appearing that Austin Hollister became the purchaser of said lots, to wit, No. 1 at the price of $151.00 and No. 2 at the price of $155.00 *cents;* that he paid one-fourth in hand to the commissioner and gave his
217 bonds for the residue, which report, being seen and examined by the court, is hereby confirmed, *and* it is ordered that the commissioner, after retaining the expenses attending the surveying and sale of said lands, together with his own charges and the clerk's fees when ascertained, pay over the surplus, if any, into the treasury according to law.

A copy.

Teste: A. F. RADER, *Clerk.*

Steel Tract. Order of Sale.

April Term, 1843, Nicholas Circuit Superior Court.

APRIL 10, 1843.

The commissioners of forfeited and delinquent lands made report of a tract of land in this county of 1,035 acres surveyed for Robert Steel the 9th of September, 1794, and patented in 1796 or '7, lying on the south side of Gauly river and adjoining the lands of Robert Young and Andrew Moore; that said tract was forfeited for the non-payment of taxes due thereon as well as for failing to enter the same on the com's books. The same is forfeited in the name of the patentee, Robert Steel, and his representatives, and that the taxes and damages thereon amount to $12.51. It is therefore adjudged and ordered that said com'r of delinquent and forfeited lands, after platting out such portions thereof as are in actual occupancy thereof, claiming under junior titles, and such other parts thereof as are exempt from sale, and after advertising the same according
218 to law, proceed, at the next June court for Nicholas county, before the court-house door of said county, to sell such portions of said tract as are subject to sale in the manner and upon the terms prescribed by law, and that he report his proceedings to the court.

A copy.
Teste: A. F. RADER, *Clerk.*

Steel Tract. Sale Confirmed.

September Term, 1843, Nicholas Circuit Superior Court.

SEPTEMBER 7, 1843.

The commissioners of delinquent and forfeited lands for the county of Nicholas this day made report of the sale of lot No. 1, containing 693 acres, and lot No. 2, containing 377 acres, being the whole of a tract of 1,035 acres of land, lying in said county, forfeited and sold in the name of Robert Steel and containing 1,070 acres by survey, and it appearing that John Williams became the purchaser of lot No. 1 at the price of nineteen dollars seven and one-fourth cents; that John W. Jones became the purchaser of lot No. 2 at the price of ten dollars ninety-two and three-fourths cents; that they respectively paid one-fourth thereof in hand to the commissioners and gave their bonds for the residue: It is ordered that the commissioners, after retaining the expenses attending the surveying and the sale of said —, together with his own charges and the clerk's fee, when ascertained, pay over the surplus into the treasury according to law.

219 A copy.
Teste: A. F. RADER, *Clerk.*

220 *Reports of Comm'r of Del. & For. Lands. Filed with Plaintiffs' Amended and Supplemental Bill as Part of Exhibit No.* 1.

Reports of forfeitures and sales.

Young & Hyde Tract. Report of Delinquency.

The report of the commiss'r of forfeited and delinquent lands for Nicholas county to the hon'ble the judge of the circuit superior court of law and chancery in the case of ——

Four tracts, containing, the three first, 1,000 acres each and, the fourth, 1,260 acres, lying in said county, on the southeast branches of Gauley river, patented to Robert Young and Benjamin Hyde on the 7th and 8th days of September, 1792.

These tracts have never been listed upon the commissioner's books and the taxes never assessed and paid, and they are, therefore, forfeited to the Commonwealth.

I have assessed them at 20 cents per acre, amounting, No. 1, 1,000 acres, $200.00; No. 2, 1,000 acres, $200.00; No. 9, 1,000 acres, $200.00, and No. 10, 1,260 —, $252; annual tax, 20 cents (same for 1841, which is 12½c.).

Tax from 1811 *to* 1841, *Inclusive.*

On No.	1.	Principal	$6 00	Damage	$5 56	Total	$11 56
"	2.	Do.	6 00	Do.	5 56	Do.	11 56
"	9.	Do.	6 00	Do.	5 56	Do.	11 56
"	10.	Do.	7 56	Do.	7 00	Do.	14 56
			$25 56		$23 68		$49 24

Y'r commissioner has carefully resurveyed said tracts and identified them by their metes and bounds. They contain, as far as my own observation and the information derived from other sources extend, some valuable land in spots.

All of which — respectfully submitted.

ALEX'R BROWN,
Comm'r of F. & D. Lands.

Sept. 7th, 1841.

☞ The report of the sale of the above land appears to be lost or mislaid.

221 *McAusland Tract. Report of Delinquency.*

Report of the commissioner of forfeited and — lands in Nicholas county to the hon'ble judge of the circuit superior court of law and chancery in case of ——

Three tracts, containing 1,000 acres each, lying in said county, on the southeast branches of Gauley river, and patented to Humphrey McAusland on the 7th and 8th days of September, 1792.

These tracts *is* forfeited to the Commonwealth for non-payment of taxes as well as for failure to enter the same on the commissioner's

books. I have assessed these at twenty cents per acre, amounting to $600.00, making the annual tax sixty cents; the principal of tax, $18.00; damages, $16.70; total, $34.70. These tracts have been carefully surveyed and indentified and represented by the surveyor as containing some very fine land.

All which is respectfully submitted.

ALEX'R BROWN,
Comm'r of Forf'd and Del. Lands.

September 7th, 1841.

McAusland Tract. Report of Sale.

To the hon'ble the judge of the circuit superior court of law and chancery of Nicholas county:

The undersigned, commissioner of forfeited and delinquent — in said county, reports that in obedience to the decretal order of the — day of April, 1841, and pursuant to an advertisement inserted by him in the "Kanawha Jeffersonian," a newspaper published at Kanawha Court-House, for six weeks next preceding the 9th day of November, 1841, it being the first day of the quarterly court (see affidavit of printer affixed to the report of sale of Crammond's tract of 24,630 acres), and pursuant to printed advertisement put up thirty days next preceding the said 9th day of November, 1841, at
222 the front door of the court-house and at four other of the most public places in said county, he did, at Nicholas Court-House, on the 9th day of November, 1841, with public out-ry, sell to the highest bidder three tracts, containing one thousand acres each, in the name of Humphrey McAusland, situated in said county, on the southeast branches of Gauley river. These tracts were sold as per tabular statement:

No. of tract and contents.	Purchaser.	Amount of purchase.	One-fourth of purchase-money.	Residue on bond and sec'ty.	Remarks.
3 1,000	John Williams.	51 00	12 75	38 25	
4 1,000	"	51 00	12 75	38 25	
6 1,000	"	5 00	1 25	3 75	
		$107 00	$26 75	$80 25	

Charges for Resurveying Tract No. 30 of 1,000 Acres.

To running 100 poles at 1c.	$1 00
" " 400 " " ½c.	2 00
To 3 hands, one day each at $1.25 per day	3 75
" plotting and calculating	1 00
" mileage	25
	$8 00

Commissioner's Charges on the Above.

To advertising 5 weeks in the Jeffersonian and postage	2 50
To twenty per cent. on whole amount of sale of No. 3	10 20
	12 70

Charges for Resurveying Tract No. 4, Cont. 1,000 Acres.

To running 100 poles at 1c.	$1 00
" " 400 " " ½c.	2 00
" 3 hands, one day each at $1.25 per day	3 75
" plotting and calculating	1 00
" mileage	25
	$8 00

223 *Commissioner's Charges on Tract No. 4.*

To advertising 5 weeks in the Jeffersonian and postage	$2 50
To twenty per cent. on whole amount of sale of No. 4	10 20
	$12 70

Charges for Resurveying Tract No. 6, Cont. 1,000 Acres.

To running 100 poles at 1c.	$1 00
" " 400 " " ½c.	2 00
" 3 hands, one day each at $1.25 per day	3 75
" plotting and calculating	1 00
" mileage	25
	$8 00

Commissioner's Charges on Tract No. 6.

To advertising 5 weeks in the Jeffersonian and postage	$2 50
To twenty per cent. on whole amount of sale of No. 4	1 00
	$3 50

Total.

Resurveying three tracts, Nos. 3, 4, & 6	$24 00
Commissioner's charges on Nos. 3, 4, & 6	28 90
Whole amount of expenses	$52 90
Amount of taxes due on Nos. 3, 4, and 6	$18 00
" " damages " " 3, 4, and 6	16 70
Total tax and damages	$34 70

Respectfully submitted.

ALEX'R BROWN,
Com'r of F. & D. L'ds.

Nicholas Co., Va.

224 *Drummond Tract. Report of Delinquency.*

Report of the commissioner of forfeited and delinquent lands in Nicholas county to the hon'ble judge of the circuit superior court of law and chancery in the case of ——

A tract, containing 1,000 acres, lying in said county, on the southeast branches of Gauley river, joining the said Young, Rogers, and Hyde survey No. 4 on the east and No. 6 on the west side, and patented to Wm. Drummond on the 3rd day of March, 1792.

This tract is forfeited to the Commonwealth for non-payment of taxes as well as for failure to enter the same on the commissioner's books.

I have assessed this tract at twenty cents per acre, amounting to $200.00, making the annual tax 20 cents; principal of tax, $6.00; damages, $5.56; total, $11.56. This tract has been carefully resurveyed and identified and represented by the surveyor as containing very good land.

Respectfully submitted.

ALEX'R BROWN,
Comm'r Forf. and Del. Lands.

September 9th, 1841.

Drummond Tract. Report of Sale.

To the hon'ble the judge of the circuit superior court of law and chancery of Nicholas county:

The undersigned, commissioner of delinquent and forfeited lands in said county, reports that in obedience to the decretal order of the — day of April, 1841, and pursuant to an advertisement inserted by him in the Kanawha Jeffersonian, a newspaper published at Kanawha Court-House, for four weeks next preceding the 9th day of November, 1841, it being the first day of the quarterly court (see affidavit of the printer affixed to the report of sale of Crammond's tract of 24,630 acres), and pursuant to printed advertisements put up thirty days next preceding the said 9th day of
225 November, 1841, at the front door of the court-house and at four other of the most public places in said county, he did, at Nicholas Court-House, on the 9th day of Nov., 1841, with public outcry, sell to the highest bidder a tract of one thousand acres, forfeited in the name of William Drummond, situated on the southeast branches of Gauley river. This tract was sold as per tabular statement:

Tabular Statement.

No. of tract and contents.	Purchaser.	Whole am't of bid.	One-fourth of purchase-money.	Residue on bond and security.	Remarks.
No. 5 1,000	John Williams.	$39 00	$9 75	$29 25	

Charges for Resurveying the above 1,000 *Acres.*

To running 100 poles at 1c.	$1 00
" " 400 " " ½c.	2 00
" 3 hands, one day each at $1.25 per day	3 75
" plotting and calculating	1 00
" mileage	25
	$8 00

Commissioner's Charges on Tract No. 5.

To advertising 6 weeks in the Jeffersonian and postage	$2 50
To twenty per cent. on the whole amount of sale	7 80
	$10 30

Total.

Resurveying tract No. 5	$8 00
Commissioner's charges	10 30
Whole expenses	$18 30
Whole amount of tax and damages on No. 5	$11 56

All of which is respectfully submitted.

ALEX'R BROWN,
Comm'r of D. and F. Lands.

Nicholas county, Va.

226 *Ryburn Tract. Report of Delinquency.*

Report of the commissioner of delinquent and forfeited lands in Nicholas county to the honbl. judge of the circuit superior court of law and chancery in the case of ——

Two tracts, containing 1,000 acres each, lying in said county, on the southeast branches of Gauley river, and patented to John Ryburn on the 3rd July, 1792.

These tracts are forfeited to the Commonwealth for non-payment of taxes as well as for failure to enter the same on the commissioner's books.

I have assessed these tracts at twenty cents per acre, amounting to $400.00, making annual tax forty cents; principal of tax, $12,00; damages, $11.12; total, $23.12.

These tracts have been carefully resurveyed and identified and represented by the surveyor as containing some very good land.

All of which is respectfully submitted.

ALEX'R BROWN,
Comm'r of D. & F. L'ds.

September 7th, 1841.

Ryburn Tract. Report of Sale.

To the hon'ble the judge of the circuit superior court of law and chancery of Nicholas county:

The undersigned, commissioner of forfeited and delinquent lands in said county, reports that in obedience to the decretal order of the — day of April, 1841, and pursuant to an advertisement inserted by him in the Kanawha Jeffersonian, a newspaper published at Kanawha Court-House, for five weeks next preceding the 9th day of November, 1841, it being the first day of the quarterly court (see affidavit of the printer affixed to the report of sale of Crammond's tract of 24,630 acres), and pursuant to printed advertisement put thirty days next preceding the said 9th day of November, 1841, at the front door of the court-house and at four other of the most public places in said county, he did, at Nicholas court-house, on
227 the 9th day of November, 1841, with public outcry, sell to the highest bidder the tracts, containing one thousand — each, in name of John Ryburn, situated in said county, on the southeast branches of Gauley river. These tracts were sold as per tabular statement:

Tabular Statement.

No. of tracts and contents.	Purchaser.	Whole am't of purchase.	One-fourth of purchase.	Residue on bond and security.	Remarks.
7 1,000	John Williams	$20 00	$5 00	$15 00	
8 1,000	"	20 00	5 00	15 00	
		$40 00	$10 00	$30 00	

Charges for Resurveying Tract No. 7, Cont. 1,000 Acres.

To running 100 poles at 1c.	$1 00
" " 400 " " ½c.	2 00
" 3 hands, one day each at $1.25 per day	3 75
" plotting and calculating	1 00
" mileage	25
	$8 00

Commissioner's Charges on Tract No. 7.

To advertising 5 weeks in the Kanawha Jeffersonian and postage	$2 50
To 2 days, — *per diem*, attending survey, making reports, &c.	4 00
	$6 50

Charges for Resurveying Tract No. 8, Cont. 1,000 Acres.

To running 100 poles at 1c.	$1 00
" " 400 " " ½c.	2 00
To 3 hands, one day each at $1.25 per day	3 75
" plotting and calculating	1 00
" mileage	25
	$8 00

228 *Commissioner's Charges on Tract No. 8.*

To advertising 5 weeks in the Jeffersonian and postage	$2 50
To 2 days attending survey, making *making* reports, &c.	4 00
	$6 50

Total.

Resurveying two tracts, Nos. 7 and 8	$16 00
Commissioner's charges on Nos. 7 and 8	13 00
Whole expenses	$29 00
Whole amount of tax and damages on Nos. 7 and 8	$23 12

Respectfully submitted.

ALEX'R BROWN,
Com'r of D. & F. Lands.

Nicholas county, Va.

Report of John G. Stephenson, Commissioner of Delinquent and Forfeited Lands for Nicholas County.

Staples tract. Report of delinquency.

Names of owners.	No. of acres.	Local description.	Distance and bearing from court-house.	Value of land per acre.	Am't of tax & damage.	Remarks.
John Staples..	1,703	On the south of Gauley river at the mouth of Cherry Tree river.	East of the court-house 15 miles.	5 cents.	$8 67	This was originally surveyed for Hudson Martin and patented to John Staples 30th March, 1795. No conveyance on record in the office of the general court nor in this county. This tract has never been entered upon the books of the commissioner.

229 JOHN G. STEPHENSON,
Commiss. of Del. and Forfeited Lands for Nicholas County.

The above is respectfully submitted.

The following is the commiss. acc't of expenses of survey, &c., and report of sale:

I hereby report the sale of a tract of land containing 1,703 acres in the name of John Staples, lying on the south side of Gauley river,

at the mouth of Cherry Tree river, on the second Tuesday in August, in compliance with an order of court. The above tract has been advertised according to law and purchased by John Williams at $75.00.

Costs of this Survey.

To running 2,767 poles		$14 33
To platting and calculating 16 courses		1 60
To travelling 30 miles at 5 cents per mile		1 50
To four days of pack horse, and one hand 2 days		4 00
		$21 43
Nathan Hanna and Son, 2 days each		4 00
Joshua Jones, 2 days as pack-horse man at $1.00 per day		2 00
Camel Woods, *w* days carrying chain		2 00
Francis Duffy, including 3 days' travelling		3 00
		$32 43
John G. Stephenson, to 6 days' actual attendance as commissioner at $2.50 per day	15 00	15 00
To reporting to court	2 00	2 00
To report of sale	2 00	2 00
To writing 5 advertisements and posting up	13 00	13 00
To filing report and other papers in relation thereto	1 00	1 00
To printer's fee	2 00	2 00
	$35 00	$67 43
Tax and damages		8 67
Aggregate amount, including tax and damages		$76 10

230 *Steel Tract. Report of Delinquency.*

Report of the commissioner of delinquent and forfeited lands in Nicholas county to the hon'ble judge of the circuit superior court of law and chancery of said county; reports a tract of 1,035 acres surveyed for Robert Steel on the 9th Sept., 1794, and patented in 1796 or '7, situated on the south side of Gauley river, joining lands of Robert Young and A. Moore.

This tract of 1,035 acres is forfeited to the Commonwealth for the non-payment of taxes *diew* thereon, as well as for failing to enter the same on the commissioner's books. This tract is forfeited in the name of the original patentee and his representatives.

I have assessed this tract of 1,035 acres at 20 cents per acre, amounting to 206.00, making the annual tax 20½ cts. Total tax from 1811 to 1843, inclusive, $6.56 *cts.;* damages, $5.95; total tax and damage, $12.51; all of which is respectfully submitted.

JOHN BROWN,
D. & F. L. Commit-ioner for Nicholas County.

Steel Tract. Report of Sale.

To the hon'ble judge of the circuit superior court of law and chancery for Nicholas county, Va.:

The undersigned, commissioner of del't and F. L. for said county, reports that, in obedience to a decretal order made on the 7th day of April, 1843, directing the acting commit-ioner to sell a tract of land containing 1,035 acres patented to Robert Steel and situate on the south side of Gauley river and forfeited in his name for never having listed the same on the commissioner's books nor having paid the taxes *diew* thereon from 1811 to 1843, inclusive, and pursuant to an advertisement inserted by him in the Western Whig, a newspaper published at Lewisburg, in the county of Greenbrier, for 5
231 weeks next preceding the 13th day of June, 1843 (see affidavit of printer affixed to Merry Walker's survey of 1,115 acres), and pursuant to written advertisement put up at the front door of the court-house and four other of the most public places in said county for thirty days next preceding the said 13th day of June, 1873, — did, at the front door of the court-house, with public outcry, sell to the highest bidder lots No. 1 of 693 acres, No. 2 of 377 acres, they being lots of the above-mentioned tract of 1,035 acres, after reserving any claims that are entitled to be reserved by law and forfeited as above mentioned and sold as per tabular statement:

Tabular Statement.

No. of tract and contents.	Purchaser's names.	Whole am't of bid.	One-fourth of the purchase-money.	Residue, bond, & security.	Remarks.
Lot No. 1, 693 A...	John Williams..	$19 07¼	$4 76¾	$14 30½	Securit,—
Lot No. 2, 377 A...	John Jones	10 92¾	2 73	8 19¾	John W. Jones John Williams

Total amount of surveying said tract of 1,035 acres and dividing the same into lots—chainman, marker, and boarding expenses	$13 00
Advertising same in the Western Whig	2 75
Postage	50
My commit-ion on whole amount of sales, at 20 per cent.	6 00

The whole amount of expenses, exclusive of clerk's fees, which are not yet ascertained.

Total amount of taxes and damages, $12.54.

All of which is respectfully submitted.

JOHN BROWN,
D. & F. L. Com. for N. C'ty.

232 *Penton Tract. Report of Delinquency..*

Report of the commissioners of delinquent and *delinquent* lands in Nicholas county to the hon'ble judge of the circuit superior court of law and chancery in case of ——

Four tracts, containing 2,000 — each, lying in said county, on the north branches of Gauley river, and patented to Abner Penton, ass'nee of John Young, ass'ee of David Anderson, on the 4th and 5th days of Feb'y, 1789.

These tracts are forfeited to the Commonwealth for non-payment of taxes, as well as for failure to enter the same on the commissioner's books.

We have assessed these tracts at ten cents per acre, amounting to $800.00, making the annual tax eighty cents, the principal of tax $24.80; damage, $22.52; total tax and damage, $47.12.

All of which is respectfully submitted.

ALEX'R BROWN,
JOHN BROWN,
D. L. Com'rs for N. C'ty.

Penton Tract. Report of Sale.

To the hon'ble judge of the circuit superior court of law and chancery for Nicholas county, Va.:

The undersigned, commissioner of forfeited and delinquent lands in said county, reports that in obedience to the decretal order of the 8th of April, 1842, and pursuant to an advertisement inserted by him in the Kanawha Jeffersonian, a newspaper published at Kanawha Court-House, for five weeks next preceding the 14th day of June, 1842, that being the first day of the quarterly court (see the affidavit of printer affixed to the report of the sale of Abner Penton's tract of 3,000 acres, No. 3), and pursuant to written advertisement put up thirty days next preceding the 14th day of June, 1842, at the front door of the court-house — at four other of the most public
233 places in said county, he did, at Nicholas Court-House, on the 14th day of June, 1842, with public outcry, sell to the highest bidder lot No. 2, of 900 acres, being a part or a surplus of a survey of 2,000 acres, No. 2, after reserving a survey of 20 acres patented to James Dyer, Jr., 50 acres patented to Isaac Duffield and John Given, as represented in the plan of said survey of 2,000 acres, No. 2, and forfeited in the name of Abner Penton. This tract was sold as per tabular statement:

Tabular Statement.

No. of tracts and contents.	Purchaser.	Whole am't of bid.	One-fourth of the purchase.	Balance of bond.	Remarks.
No. 2, 900 A.	Austin Hollister.	$12 00	$3 00	$9 00	

Surveyor's fees, including chainman's and boarding expenses ---------- $5 00
My commission on the whole amount of sale, at 20 p'r c't. -- 2 40

All of which is respectfully submitted.

JOHN BROWN,
C. D. F. L. N. C.

Gaines Tract. Report of Delinquency.

Report of the commissioner of forfeited and delinquent lands in Nicholas county to the hon. judge of the circuit superior court of law and chancery in the case of ——

A tract, containing 300 acres, lying in said county on Cranberry creek and about six or seven miles above where the old road leads from Cherry Tree to Williams bottom, and patented to William F. Gaines, ass'ee of Frances Ludington, on the 26th day of July, 1798.

This tract is forfeited to the Commonwealth for non-payment of taxes, as well as for failure to enter the same on the commissioner's books.

234 I have assessed this tract at fifty cents per acre, amounting to $150.00, making the annual tax 15 cents; amount of tax, $4.50; damages, $4.17; total, $8.67.

All which is respectfully submitted.

ALEX. BROWN,
Comm'r F. & D. Lands.

Sept. 9th, 1841.

Gaines Tract. Report of Sale.

To the hon. the judge of the circuit superior court of law and chancery of Nicholas county:

The undersigned, commissioner of forfeited and delinquent lands in said county, reports that in obedience to the decretal order of the —th day of April, 1841, and pursuant to an advertisement inserted by him in the Kanawha Jeffersonian, a newspaper published at Kanawha Court-House, for five weeks next preceding the 9th day of Nov'r, 1841, it being the first day of the quarterly court (see affidavit of printer affixed to the report of sale of Crammond's tract of 24,630 acres), and pursuant to printed advertisements put up thirty

days next preceding the said 9th day of November, 1841, at the front door of the court-house and at four other of the most public places in said county, he did, at Nicholas Court-House, on the 9th day of November, 1841, with public outcry, sell to the highest bidder a tract of land containing three hundred acres forfeited in the name of William F. Gains, situated in said county on Cranberry creek and about six or seven miles above where the old road that leads from Cherry Tree to Williams bottom crosses said creek. This tract was sold as per tabular statement:

Tabular Statement.

No. of acres.	Name of purchaser.	Amount of purchase.	One-fourth of purchase.	Residue on bonds and security.	Remarks.
300	John Williams.	$30 50	$7 63	$22 87	

235 *Charges for Resurveying the Within* 300 *Acres.*

To running 100 at 1c.	$1 00
" " 779 " ½c.	3 89
" 3 hands, 2 days each at $1.25 per day	7 50
" platting and calculating	1 00
" *miling* 60 miles	3 00
	$16 39

Commissioner's Charges on the Above 300 *Acres.*

To advertising 5 weeks in the Jeffersonian and postage	$2 75
To twenty per cent. on the whole amount of sale	6 10
	$8 85

Recapitulation.

Charges for resurveying	$16 39
Commissioner's charges	8 85
Total expenses	$25 24
Whole amount of tax and damage	$8 67

Respectfully submitted.

ALEX. BROWN,
Com'r of D. & F. Lands.

Nicholas county, Va.

Cloud Tract. Report of Delinquency.

Report of the commissioner of delinquent and forfeited lands in Nicholas county to the hon. judge of the circuit superior court of law and chancery in case of ——

Two tracts, containing 5,000 acres each, lying in said county, on Gauley river, and patented to Abner Cloud, ass'ee of Lewis Franklin, on the 10th day of March, 1790.

These tracts forfeited to the Commonwealth for non-payment of taxes, as well as for failure to enter the same on the commissioner's books.

236 We have assessed these tracts at ten cents per acre, amounting to $1,000.00, making the annual tax $1.00, the principal of tax, $31.00; damages, $27.90; total tax and damages, $58.90.

All which is respectfully submitted.

ALEX. BROWN,
JOHN BROWN, *D. L. C.*

Cloud Tract. Report of Sale.

To the hon. judge of the circuit superior court of law and chancery for Nicholas county, Va.:

The undersigned, commissioner of forfeited and delinquent lands in said county, reports that in obedience to the decretal order of the 8th day of April, 1842, and pursuant to an advertisement inserted by him in the Kanawha Jeffersonian, a newspaper published at Kanawha Court-House, for five weeks next preceding the 14th day of June, 1842, that being the first day of the quarterly court (see affidavit of printer affixed to the report of sale of Abner Penton's tract of 300 acres, No. 3), and pursuant to written advertisements put up thirty days next preceding the 14th day of June, 1842, — with public outcry, sell to the highest bidder lot No. 1 of 2,500 *hundred* acres, also lot No. 2 of 2,500 acres, that being the whole of a survey No. 1, containing 5,000 acres forfeited in the name of Abner Cloud, ass'ee of Lewis Franklin, south side of Gauley river. These lots were sold as per tabular statement:

Tabular Statement.

No. of tracts and contents.	Purchaser.	Whole am't of bid.	One-fourth purchase-money.	Residue in bond.	Remarks.
No. 1, 2,500	John Williams	$31 50	$7 87½	$23 62½	
No. 2, 2,500	John Williams	40 00	10 00	30 00	

Surveyor's fees for surveying said whole tract, including dividing the same, chainmen, marker, & pr's	$20	00
237 Printer's fee for advertising	2	25
Examining C. S. offices and postage	1	25
My commission on whole amount of sale at 20 p.	14	30

All of which is respectfully submitted.

JOHN BROWN,
D. & F. L. Comm'r.

Total amount of tax and damage, $29.45.

STATE OF WEST VIRGINIA, } *To wit:*
Nicholas County, }

I, A. F. Rader, clerk of the circuit court for the county aforesaid, do hereby certify that the foregoing are true copies of the reports of the commissioners of forfeited and delinquent lands for Nicholas county, as appears from the records and files of my office.

Given under my hand this April 20th, 1874.

A. F. RADER, *Clerk.*

238 EXHIBIT No. "17."

This indenture made this 20th day of June in the year of our Lord one thousand eight hundred and 43 between John Brown commissioner of delinquent and forfeited lands in and for the county of Nicholas and Commonwealth of Virginia of one part and John Williams of Greenbrier county of the other part. Whereas the circuit superior court of law and chancery for the said county of Nicholas did by virtue of an act of the General Assembly of Virginia passed on the 30th day of March 1837, entitled "An act to amend and explain the laws concerning western land titles and for other purposes" constitute and appoint the said Alexander Brown and John Brown commissioners of delinquent and forfeited lands in and for the county of Nicholas. And whereas under the appointment aforesaid and in pu-suance of the said recited act and of the amendatory act of the General Assembly passed on the 15th day of March 1838 entitled "An act to amend an act entitled An act to amend and explain the laws concerning western land titles and for other purposes" the said John Brown by virtue of an order of the judge of the circuit superior court of law and chancery for said county made on the 8th day of April 1842, did cause public notice to be given of the time and place of sale of the said land hereinafter described in a newspaper published nearest the place of sale (to wit: in the
239 Kanawha Jeffersonian published in the town Charleston in the county of Kanawha) and caused the same to be posted at the court-house door of said county, and at least four other of the most public places in said county, for at least thirty days next preceeding the day of sale and in pu-suance of said advertisement did offer at public sale at the door of the court-house aforesaid on the 14th day of June 1844 among others the tract or parcel of land here-

inafter described. And at the said public sale the said John Williams of Greenbrier county the party of the second part being the highest bidder became the purchaser of lots or tracts No 1 & 2 being a tract or parcel of land containing 5000 acres and joining lands of John Young & John Dickinson and patented to Abner Cloud assignee of Lewis Franklin on the 10th day of March 1790, and which said lot or tract No 1 & 2 is bounded as follows, to wit: That is said whole tract embracing both lots as by the patent calls. Beginning at a sugar tree and elkwood corner to said Young's survey No 3 No 4 No 8 and running thence in line of the same and by a line of John Dickson's survey No 1 S 55 E 1000 poles to a sugar tree corner to said Dickson's thence S 35 W 800 poles to a post on the county line thence along said county line N 55 W 1000 poles crossing two branches of Gauley river to a post in the aforesaid county line thence
N 35 E 800 poles to the beginning and surveyed on the 5th
240 day of August 1786. And whereas the whole of the purchase-money having been paid by the said party of the second part the purchaser is now entitled by the provisions of the first-recited act, to a deed for the same from the said party of the first part, he the said commissioner conveying such title therein as the said act authorises to be conveyed or as he can convey as the authorized commissioner as aforesaid (but without any personal or individual responsibility whatever)

Now this indenture witnesseth that the said party of the first part for and in consideration of $18 12½ ce-ts one-fourth whereof was to them in hand paid at the date of the sale aforesaid and the residue (together with $—— interest accruing on said residue since the same became due) at and before the sealing and delivery hereof the receipt whereof is hereby acknowledged, do hereby grant bargain sell and convey unto the said party of the second part his heirs and assigns said lot or tract No 1 & 2 to hold the same by and according to the metes and bounds and abbuttals above set forth with all and singular the tennements hereditaments and appurtanances as well as the right tittle and interest of the said party of the first part and under and by virture of the act aforesaid, and under and by virtue of his appointment as aforesaid authorized to convey in and to the same, to have and to hold the same and all and singular the
241 appurtanances aforesaid to the said party of the second part his heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written

JOHN BROWN [SEAL]
D & F L Com'r for N County

NICHOLAS COUNTY,
CLERK'S OFFICE, *June 29th*, 1843.

This deed of bargain and sale from John Brown, com'r of D. & F. lands for Nicholas county, to John Williams for lands in Nich-

olas county was presented in this office, duly acknowledged, and accordingly admitted to record.

Teste: SAMUEL GIVENS, *Clerk.*

A copy.
Teste: JOHN A. HAMILTON,
Clerk Nicholas County Court.

242 "EXHIBIT No. 21."

This indenture made this 21st day of February, in the year one thousand eight hundred and fifty —, between John Williams and Jane, his wife, of the county of Greenbrier, and State of Virginia, of the one part, and Allen T. Caperton, of Monroe county, and said State, of the other part: witnesseth:

That the said John Williams, and Jane, his wife, for and in consideration of one dollar to them in hand paid, by the said Allen T. Caperton, at the time of the execution hereof, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said Allen T. Caperton, his heirs and assigns, fourteen distinct and separate tracts or parcels of land, lying and being in the county of Nicholas, hereinafter to be described, and being the lands the said Williams purchased as forfeited and delinquent lands in said county of Nicholas, all of which lands or tracts are connected with each other and his large tract of 153,900 acres, and being situated on the east side of Gauley river and upon its tributary waters, and containing in the ag-*ur*ate seven thousand nine hundred and fifty-six acres, according to the surveys made by the commissioners of forfeited and delinquent lands, in the said county of Nicholas, which were sold in lots or tracts to said Williams, and numbered and bounded as follows: Number one, two and nine, of one thousand acres each, and No. 10, of twelve hundred and sixty acres, forfeited in the name of Robert Young and Benjamin Hide, and sold in their name, and number three, four and six, of one thousand acres each, forfeited in the name of Humphrey Macostin, and number five of one thousand acres, forfeited in the name of William Drummond, and numbers seven and eight of one thousand acres each, forfeited in the name of John Ryburn, and is bounded as follows, to wit: Lot number one of a thousand acres, beginning at a poplar at large rocks near the top of a
243 ridge, in which rocks is a large cove of water, S. 45 W. 480 poles to two large poplars by a rock house on the west side of a large flat, S. 15 W. 140 poles to a chestnut on a flat, S. 35 E. 80 poles to a maple at a gap, S. 15 W. 200 poles to a red oak in a flat, S. 40 E. 34 poles to a red oak, N. 35 E. 34 poles to a large chestnut oak, S. 30 E. 144 poles to a chestnut, N. 70 E. 46 poles to a walnut in the head of small hollow, corner to No. 2, and with N. 18 E. 730 poles to the beginning. Number two of one thousand acres, beginning at a white walnut, corner to No. 1, and leaving same, thence S. 20 E. 108 poles, crossing a creek to a yellow lynn and

maple, S. 75 E. 120 poles to a lynn and sugar, corner to No. 3, and with, N. 22 E. 800 poles to a red oak, and leaving, thence S. 45 W. 200 poles to a large poplar, corner to No. 1, and with, S. 18 W. 730 poles to the beginning. Number three, beginning at a red oak, corner to No. 2, and running with same, S. 22 E. 800 poles to a lynn and sugar, and leaving S. 75 E. 200 poles to a yellow lynn, corner to No. 4, and with, N. 22 E. 800 poles to a chestnut, S. 75 E. 200 poles to the beginning. Number four, beginning at a red oak on a line of No. 9, and with, N. 75 W. 200 poles, passing the corner of No. 9, to a chestnut, corner to No. 3, and with the same, S. 22 W. 800 poles to a yellow lynn, and leaving S. 75 E. 200 poles to a yellow lynn and poplar, corner to No. 5, and thence N. 22 E. 800 poles to the beginning. Number five, beginning at a chestnut on a line of No. 9, and with N. 75 E. 200 poles to a red oak, corner to No. 4, and with S. 22 W. 800 poles to a yellow lynns and poplar, and leaving S. 75 E. 130 poles to a poplar, marked with figure 2, and W. on a dividing ridge, S. 80 E. 70 poles to two chestnuts, corner to No. 6, and with N. 23 E. 800 poles to the beginning. Number six, beginning at a black oak on a line of No. 9, and running with N. 75 W. 200 poles to a
244 chestnut, corner to No. 5, and with S. 23 W. 800 poles to two chestnuts, and leaving S. 80 E. 200 poles to a chestnut and black oak, N. 23 E. 800 poles to the beginning. Number seven, beginning at a black oak and white oak on a line No. 9, and running with N. 75 W. 210 poles to a black oak, corner to No. 6, S. 23 W. 800 poles to a chestnut and black oak, and leaving S. 80 E. 200 poles to a poplar, N. 23 E. 710 poles to the beginning. Number eight, beginning at a large chestnut on a hillside, corner to No. 9 and 10, and with No. 9 N. 75 W. 210 to black oak and white oak, corner to No. 7, and with S. 23 W. 710 poles to a poplar, and leaving said line S. 80 E. 260 poles to a chestnut, corner to No. 10, and with N. 20 E. 700 poles to the beginning. Number nine, beginning at a large chestnut on a hillside, corner to No. 8, N. 20 W. 86 poles to a sugar tree, N. 10 E. 132 poles to a large poplar and white oak, N. 56 W. 60 poles to a red oak and maple, S. 55 W. 80 poles to a poplar and beech, N. 75 W. 146 poles to a maple and chestnut, S. 85 W. 66 poles to a chestnut, N. 65 W. 124 poles to a large chestnut and sugar tree, N. 30 W. 100 poles to a sugar tree and two dogwoods, N. 75 W. 143 poles to two black oaks, N. 35 W. 196 poles to a sugar tree and two dogwoods, N. 75 W. 143 poles to two black oaks, N. 35 W. 196 poles to a sugar tree and maple, near a *hericane*, S. 50 W. 144 poles to a red oak, S. 32 E. 56 poles to a poplar and black oak by a branch, S. 38 W. 140 poles, crossing a creek to a sugar tree on top of a hill, and corner on a line of No. 4, and with S. 75 E. 150 poles to a red oak and white oak, corner to No. 5, and with the line Nos. 6, 7 and 8 to the beginning. Number ten, beginning at a large chestnut on a hillside, corner to No. 9, S. 50 E. 260 poles, crossing a creek to a poplar on a point of a ridge, S. 20 W. 86 poles to a chestnut and red oak, S. 30 poles to a sugar tree, S. 3 E. 38 poles to a maple, S. 40 W. 32 poles to a black oak, S. 28 E. 138 poles to four sugars on top of a ridge, above Laurel

creek, S. 20 W. 22 poles to a yellow lynn, S. 60 W. 66 poles
245 to two lynns and two sugars, S. 20 E. 178 poles to a large black oak, S. 65 W. 50 poles to a yellow lynn and chestnut on the point of a ridge N. 80 W. 410 poles to a chestnut, corner to No. 8, and with the line of No. 8, 710 poles to the beginning. Also one other tract forfeited and sold in the name of John Staples, of seventeen hundred and three acres, on both sides of Cherry river, near the mouth, and is bounded as follows, to wit: Beginning at a white oak on a narrow ridge, corner to the said Williams' large tract of 153,900 acres, and joining that part of said tract sold to said Caperton, and with the same, south 190 poles to a sugar and maple, N. 70 E. 128½ poles to a large poplar in a flat, S. 10 E. 500 poles, crossing Cherry river at 450 poles to three sugar trees near the lower end of a bottom, S. 60 E. 82 poles to a yellow lynn, S. 10 W. 190 poles to a large poplar and birch, and leaving the lines of the large survey S. 44 W. 62 poles to a large chestnut on a hillside, corner to Young,, (a chestnut oak and maple marked D. H.) and with Young, N. 20 W. 86 poles to a sugar tree, N. 10 E. 132 poles to a large poplar and white oak, N. 56 W. 60 poles to a red oak and maple, S. 55 W. 80 poles to a poplar and birch, N. 75 W. 146 poles to a maple and chestnut, S. 85 W. 66 poles to a chestnut, N. 65 W. 124 poles to a large chestnut and sugar tree, N. 30 W. 100 poles to a sugar tree and two dogwoods, N. 75 W. 143 poles to two black oaks, N. 35 W. 196 poles and sugar tree and maple on a sugar-tree ridge, and leaving Young, N. 64 E. 618 poles crossing Cherry river to the beginning. Also one other tract or lot of land, containing six hundred and ninety-three acres, being lot No. 1, of part of a tract of *a* 1035 acres forfeited in the name of Robert Steel and others, and which joins the above lands, and bounded as follows, to wit: Beginning at a sugar and maple on the top of the river ridge, in the edge of old Herricaine corner to Young, and with his line S. 50 W. 110 poles to two poplars marked
a corner of 1000 acres made for Sam. Young, and same course
246 continued 34 poles to a red oak—corner of the same—and with S. 32 E. 56 poles to a poplar by a branch, S. 38 W. 140 poles crossing a creek to a sugar tree on top of a hill, S. 75 W. 24 poles to a large red oak and sugar, N. 75 W. 410 poles crossing a creek, to a large poplar, by rocks, the milk-house, corner to said Young and Moore's survey of 5867 acres, and with the latter N. 42 E. 20 poles to two chestnut oaks and maple on top of rocks, thence with a line of number two N. 35 E. 250 poles to pointers on the patent line of said 1035 acres, and corner to same and No. 2, and with said line S. 19 E. to the beginning. Also one other tract, containing three hundred acres, on Cranberry river, being one of those surveys excepted out of the said large survey, and within that part of same, sold said Caperton, which was forfeited and sold in the name of William F. Gains, and bounded as follows, to wit: Beginning at a poplar and white oak on said river or creek, N. 10 E. 83 poles to a white walnut and ash, N. 36 E. 60 poles to an ash and sugar tree in the edge of a *rivet* place, and east 146 poles, bearing up the creek to a black oak and yellow lynn, S. 55 E. 59 poles to four ashes out of one root, S. 10 W. 269 poles crossing creek or river to pointer, and

thence N. 49 W. 262 poles to the beginning. Also one other tract, or lots No. 1 and 2, containing five thousand acres, joining lands of John Young and John Dickson, and patented to Abner Cloud, assignee of Lewis Franklin, on the 10th day of March, 1790, and forfeited and sold in the name of said *Coud*, and which said lots or tract No. 1 and 2 is bounded as follows, to wit; that is to say: The whole tract embracing both lots by the calls of the patent, beginning at a sugar tree and elkwood, corner to Young's surveys Nos. 3, 4, and 8, and running thence with the same and with the line of John Dickson's survey No. 1, thence S. 55 E. 1000 poles to a sugar tree, corner to said Dickson, thence S. 35 W. 800 poles to a post on the county line, thence
247 with said county line N. 55° W. 1000 poles crossing two branches of Gauley, on said county line, thence N. 35° E. 800 poles to the beginning. In addition to the above fourteen tracts, also one other tract of four hundred acres, joining the Young and other land above described, and which said tract was granted by the Commonwealth of Virginia by patent bearing date on — day of —— to the said John Williams; now the aforesaid lots, tracts or parcels of land hereinbefore described are all lands sold and conveyed to the said John Williams (except the last-mentioned) by the commissioners of forfeited and delinquent lands for the county of Nicholas, and deeds for which are of record in said county of Nicholas, all of which will more fully appear by reference to said records, and said title as was conveyed by said commission or commissioners and such as is now in him, he hereby conveys by this indenture, and no other whatsoever, to the said Allen T. Caperton, his heirs and assigns, and also all right and title which the said John Williams, and Jane, his wife, have or hold by the said patent to the four hundred acres, to the said Allen T. Caperton, and his heirs and assigns, and that only. Together with all and singular the hereditaments and appurtenances, belonging to the aforesaid lands, or in anywise appertaining whatsoever, of them the said John Williams and Jane, his wife, and every part and parcel thereof, to have and to hold the lands hereinbefore described, with all and singular the hereditaments and appurtenances thereunto belonging, unto the said Allen T. Caperton, his heirs and assigns, forever, and the said John Williams and Jane, his wife, and their heirs, all and singular the hereditaments and premises hereby granted, with the appurtenances unto the said Allen T. Caperton, his heirs and assigns, against them, the said John Williams and Jane, his wife, their heirs, and all claiming through or under them, will warrant and forever defend, but no other claim or claims whatsoever.

248 In witness whereof, the said John Williams, and Jane, his wife, hath hereunto set their hands and affixed their seals this day and year first above written.

(Signed:) JOHN WILLIAMS, [SEAL.]
(Signed:) JANE WILLIAMS, [SEAL.]

(Endorsed.)

GREENBRIER COUNTY, *To wit:*

We, Charles McClung and Thos. M. McClintic, justices of the peace in and for the said county of Greenbrier, within the Commonwealth of Virginia, do hereby certify that John Williams and Jane Williams, his wife, parties to a certain deed bearing date 21st day of February, 1850, and hereunto annexed, personally appeared before the subscribers within our said county and acknowledged the same to be their act and deed and desired us to certify said acknowledgment to the clerk of the county court of Nicholas in order that the said deed may be admitted to record.

We further certify that we examined the said Jane Williams, wife of the said John Williams, privily and separate and apart from her said husband, and, having the aforesaid deed fully explained by us to her, she declared that she had willingly signed, sealed, and delivered the same, and that she was not induced to do so through any threats from or fears of her said husband, and that she did not now wish to retract the same.

In witness whereof we have hereunto set our hands and affixed our seals this 21st day of February, 1850.

(Signed) CHARLES McCLUNG. [SEAL.]
(Signed) THOS. M. McCLINTIC. [SEAL.]

VIRGINIA:

NICHOLAS COUNTY COURT,
CLERK'S OFFICE, *April 5th*, 1850.

249 This deed of bargain and sale from John Williams and Jane, his wife, to Allen T. Caperton for lands in Nicholas county was this day presented in my office duly certified as to its acknowledgment, and the said deed, together with the certificate thereon, is accordingly admitted to record.

Teste: R. HAMILTON, *Clerk.*

Recorded in Book G, folio 132, &c.

"EXHIBIT No. 29."

John B. Floyd, Esquire, governor of the Commonwealth of Virginia:
To all to whom these presents shall come Greeting:

Know ye, that in conformity with a survey made on the 19th day of June, one thousand eight hundred and fifty, by virtue of land office Treasury warrant No. 18,437, there is granted by the said Commonwealth, unto Douglas B. Layne and Alexander C. Layne a certain tract or parcel of land containing two thousand seven hundred and thirty-eight acres, lying in Randolph county, on Gauley river, adjoining a survey of 5450 acres made for George M. G. Edmiston, James Edmiston and Richard McNeel, and bounded as follows, viz: Beginning at a chestnut, beech and maple, on the north side of Gauley river, opposite the mouth of Straight creek, a

corner to the said survey of 5450 acres, thence with a line of the same, crossing Gauley river, south 390 poles to 3 small beeches on the top of Yew mountain, west 86 poles to a cucumber and beech at the edge of the Laurel, N. 40 W. 98 poles to 2 beeches, west 114 poles, crossing a drain to a spruce pine, beech, N. 40 W. 33 poles to two birches and beech, N. 86 poles to a beech and maple, S. 45 W. 80 poles to a maple, N. 40 W. 232 poles to 2 sugars by a cliff of rocks, N. 632 poles crossing Gauley river to 3 sugars on the
250 south side of Gauley mountain, S. 80 E. 700 poles to a poplar and beech on the south side of Gauley mountain, S. 64 poles to a beech, sugar and lynn, west 9 poles to a large Span. oak, birch and beech, a corner to the said 5450-acres survey, thence with four lines of the same, S. 20 W. 120 poles to an ash and two birches by the south side of Gauley river, S. 40 W. 160 poles, crossing Gauley river to three yellow lynns and beech, S. 5 E. 60 poles to a white oak and three birches on the river bank, S. 25 W. 72 poles to the beginning, with its appurtenances.

To have and to hold the said tract or parcel of land, with its appurtenances, to the said Douglas B. Layne and Alexander C. Layne, and their heirs forever.

In witness whereof, the said John B. Floyd, Esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond on the first day of September, in the year of our Lord one thousand eight hundred and fifty-one, and of the Commonwealth the 76th.

JNO. B. FLOYD.

I, William P. M. Kellam, register of the Virginia land office, do certify that the foregoing is a true copy from the records of the said office.

Given under my hand and seal of office, at Richmond, this 22nd day of June, A. D. 1874.

[SEAL.] WILLIAM P. M. KELLAM,
Reg. Va. L. Office.

251 EXHIBIT No. 30.

This deed made this 18th day of March 1856 between Alexander C Layne and Ellen D Layne his wife of the city of Richmond of the first part, and Douglas B Layne of the county of Alleghany and State of Virginia of the second part, witnesseth, that the said parties of the first part for and in consideration of the sum of one dollar in hand to them paid by the said Douglas B Layne of the second part, have granted bargained and sold and by these presents do grant bargain and sell and convey unto the said party of the second part the one-half of the following-described tract or parcel of land containing 2780 acres, lying and being in the county of Randolph on Gauly river adjoining a survey of 5450 acres made for George M G Edmonston James Edmonston and Richard McNeal bounded as follows, to wit: Beginning at a chestnut beech and maple on the north

side of Gauly river opposite to the mouth Strait creek a corner to the said survey of 5450 acres, thence with a line of the same crossing Gauly river S 390 poles to three small beeches on the top of Yew mountain W 86 poles to a cucumber and beech at the edge of the Laurel N 40 W 98 poles to two beeches W 114 poles crossing a drain to a spruce and beech N 40 W 33 poles to two birches and beech N 86 poles to a beech & maple S 45 W 80 poles to a maple N 40 W 232 poles to two sugar- by a cliff of rocks N 632 poles crossing Gauly river to three sugars on the south side of Gauly mountain S 80 E 700 poles to a poplar and beech on the south side of Gauly mountain S 64 poles to a beech sugar and lynn W 9
252 poles to a large Spanish oak bush and beech a corner to the said 5450-acre survey thence with 4 lines of the same S 20 W 120 poles to an ash and two beeches by the south side of Gauly river S 40 W 160 poles crossing Gauly river to 3 yellow lynns & beech S 5 E 60 poles to a white oak and three beeches on the river bank S 25 W 72 poles to the beginning. To have and to hold to him the said party of the second part his heirs and assigns forever, and the said parties of the first part do by these presents warrant and forever defend the title to the premises hereby conveyed against the claim or claims of themselves or heirs forever but none other. Witness the following signatures and seals.

ALEX C LYNN [SEAL]
ELLEN D LYNE [SEAL]

COMMONWEALTH OF VIRGINIA, *City of Richmond,* } *To wit:*

I, Henry G. Conner, a *justice* public for the city aforesaid, do hereby certify that Alexander C. Lyne, whose name is signed to the foregoing deed, bearing date the 18th day of March, 1856, this day personally appeared before me, in my city, and acknowledged the same to be his act and deed.

Given under my hand this 18th day of March, 1856.

HENRY G. CONNER, *N. P.*

COMMONWEALTH OF VIRGINIA, *City of Richmond,* } *To wit:*

I, Henry G. Conner, a notary public in and for the city aforesaid, do hereby certify that Ellen D. Lyne, the wife of Alexander C. Lyne, whose names are signed to the within deed, bearing date on
253 the 18th day of March, 1856, this day personally appeared before me, in my said city, and, being by me examined privily and apart from her said husband and having the deed aforesaid fully explained to her, she, the said Ellen D. Lyne, acknowledged the same to be her act and deed, and that she had willingly executed the same and did not wish to retract it.

Given under my hand this 18th day of March, 1856.

HENRY G. CONNER, *N. P.*

VIRGINIA :

CLERK'S OFFICE OF RANDOLPH COUNTY COURT,
September the 16th Day, 1856.

This deed from Alexander C. Lyne and wife to Douglas B. Lyne was presented in said office before the clerk thereof and, together with the certificates of acknowledgement, was admitted to record.

A copy.
Teste: J. W. CRANFORD, *Clerk.*

A copy from the record.
Teste: JAMES D. WILSON,
Clerk of the County Court of Randolph County.

254 EXHIBIT No. 31.

This deed made this 12th day of April 1859, between Douglas B Layne and Ann B Layne his wife of the county of Alleghany and State of Virginia of the first part, and Allen T Caperton of the county of Monroe and State aforesaid of the second part witnesseth, that the said Douglas B Lane and Ann B his wife for and in consideration of ten dollars in hand paid by the party of the second part, doth grant unto the said Caperton a certain tract or parcel of land lying and being on Gauly river in the county of Randolph and State aforesaid adjoining lands of Austin Hollester, McNeal and Edmonston and containing about 2700 acres (it being the same tract which was granted by patent by the Commonwealth of Virginia to Douglas B Layne and his son A C Layne who by deed of record in the county of Randolph conveyed his half to the said Douglas B Layne The said A T Caperton to have and to hold peac-ble possession of said tract of land free from the use and behoof of the said Douglas B Layne and his wife their heirs executors and administrators and all other person or persons whatsoever, the said Douglas B Layne and Ann B his wife have the right to sell and dispose of said tract of land, and have done no act or acts to encumber the same and will warrant and defend the right and title of said tract of land unto the said A T Caperton his heirs and assigns against the claims of all and every other person or persons whatsoever, and will execute such other writings as may be necessary to convey the said tract of land if requested so to do.

255 Witness the following signatures and seals the day and year above written.

DOUGLAS B LAYNE [SEAL]
ANN B LAYNE [SEAL]

GREENBRIER COUNTY, *To wit:*

I, C. R. Hines, a justice of the peace in and for the county of Greenbrier, within the Commonwealth of Virginia, do hereby certify that Douglas B. Layne, whose signature is affixed to a certain writing dated the 12th day of April, 1859, and hereunto annexed, personally appeared before me, in my said county, and acknowledged

the same to be his act and deed, and desired me to certify said acknowledgment to the clerk of the county court of Randolph county in order that the same may be recorded.

Given under my hand this 8th day of June, 1859.

C. R. HINES, *J. P.* [SEAL.]

We, C. R. Hines and John Argubrite, justices of the peace in and for the county of Greenbrier, within the Commonwealth of Virginia, do hereby certify that Ann B. Layne, wife of Douglas B. Layne, and whose signatures are affixed to a certain writing bearing date on the 12th day of April, 1859, and hereunto annexed, personally appeared before us, within our said county, and, being by us examined privily and apart from her said husband and having the aforesaid writing fully explained by us to her, she declared that she had willingly signed, sealed, and delivered the same, and that she did not now wish to retract the same.

256 Given under our hands this 8th day of June, 1859.

C. R. HINES, *J. P.* [SEAL.]
JOHN ARGLEBURT, *J. P.* [SEAL.]

VIRGINIA:

CLERK'S OFFICE OF THE COUNTY COURT OF RANDOLPH COUNTY, *September 20th*, 1859.

This deed from Douglas B. Layne and Anne B. Layne, his wife, to Allen T. Caperton was presented in said office to the clerk of said court, and it, together with the certificates to it annexed, was admitted to record.

Teste: S. BOSWORTH,
Clerk R. C. C.

257 "EXHIBIT No. 25."

Joseph Johnson, Esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, that in conformity with a survey made on the 24th day of March one thousand eight hundred and fifty-five, by virtue of — land office treasury warrant No. 21,940, there is granted by the said Commonwealth, unto Austin Hollister, a certain tract or parcel of land containing nine thousand three hundred and thirty acres, lying in Randolph county, on the waters of Gauley and Williams rivers and bounded as follows, viz: Beginning at two spruces and a birch, against the side of the ridge between the forks of Williams river, in the edge of a spruce thicket 144 poles from the south bank of the left-hand fork of said river, and on the line between the counties of Randolph and Greenbrier, and running N. 35° E. crossing said river at 240 poles, passing 4 beeches marked as corner trees at 800 poles, also crossing some of the branches of Turkey creek 1,424 poles, to a line of a survey of 2,738 acres of land made for Douglas B. Layne and Alexander C. Layne, on the 19th day of June, 1850, thence with 5 lines and to 4 corners thereof, N. 40° W. 28 poles to 2 birches and a beech, north 86 poles to a birch and maple, S. 45° W. 80 poles to

a maple, N. 40° W. 232 poles to 2 sugars by a cliff of rocks, north 150 poles to a stake in a marked line, thence with said marked line N. 55° W. 225 poles, crossing Gauley river to a white oak, beech and yellow lynn, corner to William T. Hamrick's land, thence with a line thereof, S. 80° W. 430 poles crossing Gauley river, to a birch on the south bank thereof, a corner to the said Hamrick's land, also a corner to a survey of 500 acres patented to said Hollister on the 3d day of March, 1849, and known as the Dickson land,
258 thence with a line of said 500-acre survey, reversed, S. 35° W. 500 poles to a sugar tree on a ridge, the beginning corner thereof, thence S. 35° W. 800 poles to the line between the county of Randolph and Greenbrier, thence therewith S. 55° E. 1,000 poles, crossing Williams river, through an island, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Austin Hollister, and his heirs, forever.

In witness whereof the said Joseph Johnson, Esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the first day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the Commonwealth the 80th.

JOS. JOHNSON.

I, William P. M. Kellam, register of the Virginia land office, do certify that the foregoing is a true copy from the records of the said office. Given under my hand and seal of office, at Richmond, this 31st day of March, A. D. 1874.

[SEAL.] WILLIAM P. M. KELLAM,
Reg. Va. Land Office.

"EXHIBIT No. 26."

Henry A. Wise, Esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, that in conformity with a survey made on the nineteenth day of November, one thousand eight hundred and fifty-six, by virtue of land office treasury warrants Nos. 17,410, 21,940 and 21,034, there is granted by the said Commonwealth, unto Austin Hollister, a certain tract or parcel of land containing five thousand nine hun-
259 dred and thirty-eight acres, lying in Randolph county, on the waters of Williams river, and on the Yew and Black mountains, and bounded as follows, viz: Beginning at two sugars and a maple with pointers, a corner of the counties of Randolph and Pocahontas, standing in the Greenbrier county line, and running with the Greenbrier and Randolph county line, N. 55 W. 480 p's to two spruces and a birch against the side of the ridge between the forks of Williams river in the edge of a spruce thicket, 144 p's from the south bank of the left-hand fork of said river; the beginning corner of a survey of 9,330 acres of land made for the said Hollister on the 24th of March, 1855; thence with a line of said survey, N.

35 E. (crossing Williams river at 240 p's, passing 4 beeches marked as corner trees at 800 p's, also crossing some of the branches of Turkey creek) 1424 poles to a beech with a spruce and maple pointers, on a line of a survey of 2738 acres made for Douglas B. Layne and Alex. C. Layne on the 19th day of June, 1850; thence with five lines and to 4 corners thereof reversed, S. 40 E. 5 p's to a spruce and beech, east 114 p's, crossing a drain, to two beeches, S. 40 E. 98 p's to a cucumber and beech at the edge of Laurel, east 86 p's to 3 small beeches on the top of the Yew mountain, thence north 250 p's to a bunch of lynns, corner of a survey of 5450 acres made in Pocahontas county for Richard McNeal, James Edmiston and G. M. Edmiston, thence with 8 lines and to 7 other corners thereof S. 55 E. 40 p's to a yellow lynn and 2 spruces on top of a ridge, and up the same, S. 10 E. 380 p's to 2 beeches, maple and birch; S. 20 E. 40 p's to 3 beeches on a ridge, S. 37 W. 120 p's to 4 spruce pines, S. 30 E. 50 p's to a poplar, spruce and hemlock on top of a ridge, S. 80 E. 170 poles, crossing a run to a maple, beech and 3 large cherry trees on a wide flat; S. 54 E. 38 p's; N. 60 E. 26 p's to a sugar; thence leaving said survey, S. 25 E. 70 poles to two spruces;
260 S. 18 W. 86 p's to a spruce and birch at the lower end of an island in the Bonnock Shoal run, and in the line between the counties of Randolph and Pocahontas; thence with said line, S. 50 W. 24 poles to the mouth of said run, still S. 50 W. 1354 poles further to the beginning, with its appurtenances.

To have and to hold the said tract or parcel of land, with its appurtenances, to the said Austin Hollister, and his heirs forever.

In witness whereof, the said Henry A. Wise, Esquire, governor of the Commonwealth of Virginia, hath hereunto set his [L. S.] hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the first day of February in the year of our Lord one thousand eight hundred and fifty-eight, and of the Commonwealth the eighty-second.

HENRY A. WISE.

(Endorsed:) Austin Hollister hath title to the within grant. S. H. Parker, reg. L. office.

261 "EXHIBIT No. 28."

This deed made this 12th day of February 1859 between Austin Hollister and Margaret Hollister his wife of the county of Nicholas and State of Virginia of the first part and Allen T Caperton of the county of Monroe and State aforesaid of the second part. Witnesseth that the said Austin Hollister and wife for the consideration of the sum of one dollar to them in hand paid by the said Caperton, doth grant unto the said Caperton the following parcels or tracts of land joining each other and lying and being in the county of Randolph and State of Virginia on the waters of Gauley & Williams river. The first tract contains nine thousand three hundred and thirty acres joining said Caperton's "Williams land" between said river and which tract was granted by patent by the Commonwealth of

Virginia on the 1st day of November 1855, to the said Hollister except nineteen acres out of this tract which he has heretofore sold to David Boughman. The second tract contains five thousand nine hundred and thirty-eight acres joining the first tract on the south-east side and was granted by said Commonwealth by patent dated — day of —— 1858 to the said Hollister, and the third and last tract joins the first tract on the northwest and contains five hundred acres and was granted to the said Hollister by the said Commonwealth by patent bearing date the 31st day of March 1849, the said Hollister excepts out of this last tract one hundred and fifty-one
262 acres, which now belongs to William Haminck

The said Caperton to have and to hold the said three tracts or parcels of land except the exceptions before mentioned free from the use and behoof of them the said Austin Hollister and wife their heirs executors administrators. The said Austin Hollister & wife have the right to sell and convey the said three tracts of land except the aforesaid exceptions and have no act to encumber the same And the said Austin Hollister and wife doth covenant with the said Caperton to defend the right and title of the aforesaid tracts of land except the exceptions mentioned against the claim or claims of themselves their heirs &c, but not against the claim or claims of any other person whatsoever and will execute such other writing as may be necessary if required to convey the said tracts of land excepting as before mentioned to the said Caperton.

In witness whereof the parties of the first part have hereunto set their hands & seals.

AUSTIN HOLLISTER [SEAL]
MARGARET E HOLLISTER [SEAL]

NICHOLAS COUNTY, *To wit:*

I, Fielding McCleery, a justice of the peace in and for the county aforesaid, within the State of Virginia, do hereby certify that Austin Hollister, a party to a certain deed bearing date the 12th day of February, 1859, and hereunto annexed, personally appeared before me, within my said county, and acknowledged the same to be his act and deed.

Given under my hand this 5th day of November, 1859.

J. McCLEERY, *J. P.*

263 NICHOLAS COUNTY, *To wit:*

We, Joseph Henderson and Fielding McCleery, justices of the peace in and for the county of Nicholas, within the State of Virginia, do hereby certify that Margaret E. Hollister, whose names *are* signed to a deed bearing date the 12th day of February, 1859, and hereunto annexed, personally appeared before us, in our county, and, being examined by us privily and apart from her said husband and having the writing aforesaid fully explained to her, she, the said Margaret Hollister, acknowledged the said writing to be her

act and deed and declared that she had willingly executed the same and that she did not wish to retract it.

Given under our hands this 5th day of March, 1859.

JOSEPH HENDERSON, *J. P.*
F. McCLEERY, *J. P.*

VIRGINIA:

RANDOLPH COUNTY COURT,
CLERK'S OFFICE, *April 22d*, 1859.

This deed from Austin Hollister and Margaret E. Hollister, his wife, to Allen T. Caperton, with the certificates to it annexed, was presented in said office and admitted to record.

Teste: S. BOSWORTH, *Cl'k.*

July 11, 1874.—A copy from the record.

Teste: JAMES D. WILSON,
Clerk County Court, Randolph County.

264 "EXHIBIT A."

At a term of the circuit court of Webster county continued and held on the 5th day of August, 1881.

In the Matter of ALLEN T. CAPERTON'S Tracts of 9,330, 5,000, 5,938, 2,738, and 500 Acres of Forfeited Lands.

On a petition for redemption, this day came Harriette E. Caperton and others, heirs-at-law of Allen T. Caperton, deceased, by their counsel, and filed their amended and supplemental petition; also came P. F. Duffy, commissioner of school lands, and filed his report of the forfeiture of 500 acres of land in the name of the said A. T. Caperton, and also his report showing the aggregate of taxes and interest due on the 9,330, 5,000, 5,938, and 2,738 acres in the original petition mentioned and the sum necessary to redeem the aforesaid five tracts of land; which amended and supplemental petition, report upon the forfeiture of the 500 acres of land, and report of the amount necessary to redeem the aforesaid five tracts of land are in words and figures following, to wit:

265 First, the amended and supplemental petition:

The amended and supplemental petition of Harriette E. Caperton, Tamlin Braxton and Mary E., his wife; E. J. Caperton, Wm. A. Gordon and Harriette C., his wife; James F. Patton and Malinda C., his wife; Allen Caperton, Ella Caperton, and Robert C. Stiles and Lelia C., his wife, filed in the circuit court of Webster county, in the State of West Virginia.

Your petitioners respectively represent that heretofore they filed their original petition in said court for the purpose of redeeming from forfeiture and sale the following tracts of land, to wit: 9,330, 5,938, 5,000, and 2,738 acres, as will appear from said petition, which is here made part of this amended and supplemental petition.

That in said original petition errors were committed in stating the derivation to the titles of the 5,000 and the 2,738 acres of land therein mentioned; that the true derivation of the said titles is as follows and not as stated in said petition, to wit:

That said tract of 5,000 acres was granted by the Commonwealth of Virginia to Abner Cloud by grant dated March 10th, 1790; that it was forfeited and sold as forfeited and delinquent land by
266 proceedings in the circuit court of Nicholas county in 1842, and was purchased by John Williams, to whom it was conveyed by the commissioner of delinquent and forfeited lands for said county of Nicholas, and the said Williams, by deed dated February 21st, 1850, conveyed the same to Allen T. Caperton, and that the said 2,738 acres was granted by the Commonwealth of Virginia to Douglas B. and Alexander C. Lane by grant dated September 1st, 1851; that by deed dated March 18th, 1856, and duly recorded in Randolph county, the said Alexander C. Lane conveyed his moiety of said tract of land to the said Douglas B. Lane, who, by deed dated April 10th, 1859, conveyed the whole of said 2,738 acres to the said Allen T. Caperton.

That in addition to the matters mentioned in their said original petition your petitioners here state that there was granted by the Commonwealth of Virginia, by grant dated on the 1st day of July, 1851, to the said Allen T. Caperton a tract of 500 acres of land lying in Nicholas county (now Webster) on the dividing ridge
267 between Gauley and Williams rivers, which tract was regularly on the assessor's land book for Webster county in the year 1878, was returned delinquent for the non-payment of taxes for said year in the name of said Caperton, and was on the 25th day of November, 1879, sold by the sheriff of said county for said taxes and purchased by him on behalf of the State, as will more fully appear from the report of P. F. Duffy, commissioner of school lands, herewith filed as part of this petition, marked A. (The title papers for said 500-acre tract and also for the several tracts mentioned in said original petition are here presented for the inspection and examination of the court.)

That in the month of July, 1876, the said Allen T. Caperton departed this life intestate, leaving a widow, the petitioner, Harriette E. Caperton, and the following children, to wit, the petitioners, Mary E. Braxton, E. J. Caperton, Harriette C. Gordon, Malinda C. Patton, Allen Caperton, Ella Caperton, and Lelia C. Styles, all of whom are still living and upon whom the legal title to the aforesaid
268 several tracts of land devolved as such children and heirs-at-law of the said A. T. Caperton, deceased.

That your petitioners are advised and verily believe that there is no person or persons in condition to take the benefit of the forfeiture of the aforesaid lands or any part thereof under the provisions of section three of article thirteen of the constitution of this State, and that they are entitled to redeem the same in the manner provided by the thirteenth section of chapter one hundred and thirty-four of the Acts of 1872-'3 of this State.

Your petitioners therefore pray—

That the relief asked for in the original petition may be granted.

That they be allowed to pay into court all the taxes charged and chargeable against said lands, with legal interest due thereon, and that upon the payment of said taxes and interest, with the costs of this proceeding, an order may be entered releasing said lands from the forfeiture aforesaid and restoring the title thereto to your
269 petitioners, and that they have such other, further, and general relief as they are entitled to in the premises.

HARRIETTE E. CAPERTON & ALS., *Petitioners*,
By COUNSEL.

A. C. SNYDER,
Sol. for Petitioners.

To the Hon. Henry Brannon, judge of the circuit court for Webster county:

The undersigned, commissioner of school lands in and for said county, beg- leave to respectfully report that a tract of five hundred acres of land, charged in the name of A. T. Caperton, located on the waters of Gauley & Williams rivers, in said county, was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the year 1878 and sold by the sheriff of said county on the 25th day of November, 1879, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of seven dollars and fifty cents, and
270 was purchased at said sale by the said sheriff for the State, and that the same is now liable to be sold for the benefit of the school fund.

The probable value of said land I estimate at 50 cents per acre.

Respectfully submitted.

P. F. DUFFY,
Com'r School Lands, Webster Co.

To the circuit court of Webster county, in the State of West Virginia:

The undersigned, commissioner of school lands for Webster county, in pursuance of an order made at the April term, 1881, of said court upon the petition of Harriette E. Caperton and others, heirs-at-law of Allen T. Caperton, deceased, respectfully reports—

That he has carefully examined the records and made calculation of the taxes and interest charged and chargeable against the lands in said petition and order mentioned for the years
271 1874, 1875, 1876, 1877, 1878, 1879, and 1880, and that he ascertains the aggregate of the taxes and interest, calculated at the rate of twelve per centum per annum, on the said several tracts of land for the years aforesaid to amount on the 5th day of August, 1881, to the sum following, to wit:

The 2,738-acre tract	$201 60
" 5,000 " "	457 30
" 9,330 " "	682 33
" 5,938 " "	444 59
	$1,785 82

At the request of the petitioners your commissioner reports the taxes charged and chargeable on a tract of 500 acres of land assessed in the name of A. T. Caperton and fully described in an amended petition about to be filed in said court by said petitioners, and is the same land mentioned in your commissioner's report, marked Exhibit "A," filed with this report.

That he has examined the record and carefully calculated the taxes and interest thereon charged and chargeable against
272 said tract of land for the years 1878, 1879, and 1880, and ascertains the same to be on the 5th day of August, 1881, in the aggregate, $18.60.

On the 2,738, 5,000, 9,338, and 5,938	1,785 82
" " 500-acre tract	18 69
Grand total August 5th, 1881	1,804 51

Your commissioner, therefore, reports that the sum necessary to redeem the aforesaid five several tracts of land is $1,804.51 as of the 5th day of August, 1881.

Respectfully submitted.

P. F. DUFFY,
Com'r of School Land, Webster Co.

August 4th, 1881.

And thereupon this matter came on to be heard upon the petition, amended and supplemental petition, and the report of P. F. Duffy, commissioner of school lands for Webster county aforesaid, to which there are no exceptions, and was argued by petitioners' counsel.

Upon consideration whereof it is adjudged, ordered, and decreed that said reports be, and the same are hereby, approved and
273 confirmed, and the petitioners having exhibited to the court their title papers, showing that they have title to each of the five several tracts of land mentioned in their petition and amended petition aforesaid, regularly derived from the Commonwealth of Virginia, and the court, being of opinion that the petitioners have a good and valid title to said lands, and it not appearing that there is any person in condition to take the benefit of the forfeiture thereof, doth consent and order that petitioners may redeem said lands from forfeiture.

And thereupon petitioners, with the consent of the court, paid into court, to the hands of the said Duffy, commissioner of school lands, $1,804.51, being the amount of taxes and interest due on said lands at this date, and $4.50, costs of this proceeding.

It is therefore further adjudged, ordered, and decreed that said several tracts of 2,738, 5,000, 9,330, 5,938, and 500 acres of
274 land have been redeemed, and that they be and stand released from said forfeiture and exonerated and released from all other former taxes and damages, if any such there be, and no sale thereof shall be made on account thereof, and said several tracts of land are hereby reinstated and directed to be entered and charged on the land books of said county of Webster, commencing with the year 1881, in the names of the heirs-at-law of said Allen T. Caperton, deceased.

STATE OF WEST VIRGINIA, *County of Webster*, } *ss:*

I, B. C. Conrad, clerk of the circuit court of the aforesaid county of Webster, do certify that the foregoing is a true statement and copy from the record in my office in the matter of the redemption of the tracts of 2,738, 5,000, 9,330, 5,938, and 500 acres land forfeited in name of Allen T. Caperton and redeemed by his heirs.

Given under my hand and official seal of said court this 29th day of October, 1883.

[Seal Circuit Court Webster Co., West Virginia.]

B. C. CONRAD, *Clerk.*

Fee and postage, $7.46.

275 EXHIBIT "B" FILED WITH 2 A. & S. BILL.

THE STATE OF WEST VIRGINIA:

Circuit Court of Nicholas County, August Term.

AUGUST 11TH, 1881.

In the Matter of 15 Tracts of Land *Land* Forfeited in the Name of ALLEN T. CAPERTON.

This day James S. Craig, com'r of school lands for Nicholas county, filed his report, pursuant to an order entered on a former day of this court, showing the aggregate amount of taxes and interest due and unpaid against the 15 tracts of 41,171½ acres, nine lots of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 300 acres, and 400 acres of land of Allen T. Caperton, dec'd, in Nicholas county, and in the petition of Mary E. Braxton and others, the heirs of said A. T. Caperton, mentioned and described; and thereupon the matter came on to be heard upon the papers heretofore read, the report of School Com'r James S. Craid aforesaid, and the argument of counsel.

On consideration whereof, the court being of opinion that said report is sufficient and regularly made in all respects and there being no exceptions filed thereto—

It is adjudged, ordered, and decreed that said report be, and the same is hereby, ratified and confirmed.

And it appearing from the said report that the unpaid
276 taxes due and chargeable against the said several tracts of land, viz., 41,171½ acres, nine lots of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 300 acres, & 400 acres, since the formation of this State and prior thereto, with interest thereon at the rate of 12 per centum per annum as required by law, amount as of this date to the aggregate sum of $3,100.87; and it further appearing that there is no person in possition to take the benefit of the forfeiture of said lands or any part thereof under the provisions of sec. 3 of article 13 of the constitution of this State, and the petitioners, the heirs-at-law of the said Allen T. Caperton, dec'd, having exhibited to the court their title papers, showing that they have titled to each of the aforesaid fifteen tracts of land, regularly derived from the Commonwealth of Virginia, the court is of opinion and decides that the said petitioners, the heirs-at-law of said Allen T. Caperton, dec'd, have a good and valid title to each of said several tracts of land and are entitled to redeem the same from forfeiture.

And thereupon said petitioners, with the consent of the court, paid into court to the hands of the said James S. Craid, commissioner of school lands, $3,100.87, the full amount of the taxes and interest aforesaid, and $9.00, the costs of this proceeding.

It is therefore further adjudged, order-, and decreed that the said fifteen tracts of 41,171½ acres, nine tracts of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 300 acres, and 400 acres of land lying on Gauly, Cherry, Cranberry, and Williams rivers and their waters
have been redeemed, and that they be and are released from
277 such forfeiture and exonerated and released from all other former taxes and damages, if any such there be, and no sale thereof shall be made on account thereof, and the said several tracts of land are each hereby reinstated in all respects as if no such forfeiture had occurred, and the assessor of Nicholas county is ordered and directed to enter said lands in separate tracts on the land books for said county for the year 1881 in the name of Allen T. Caperton's estate and charge the same with taxes commencing with the year 1881, all prior taxes, including the year 1880, having been paid as aforesaid.

It is further ordered that said James S. Craig, comm'r of school lands as aforesaid, do pay over to the parties entitled thereto the said $9.00 costs of this proceeding; that out of the said $3,100.87 taxes and interest aforesaid he retain ten per centum as and for his commission thereon, and pay the residue to the auditor of this State as required by law.

A true copy from the record.
Teste: A. F. RADER, *Clerk.*

Copy.
Teste: L. B. DELLICKER, *Clerk.*

278 And on another day, to wit, on the 15th day of January, 1884, the following order was made and entered of record, to wit:

TAMLIN BRAXTON, &c.,
vs.
BENJAMIN RICH and Others,
} In Equity.

On motion of the defendant Benjamin Rich he has leave to file his answer to the amended bill filed in this cause, which is accordingly done.

(The original answer referred to in the foregoing order was lost, as will be seen by the following order :)

The following order was made and entered of record on February 5th, 1885 :

TAMLIN BRAXTON, &c.,
vs.
BENJAMIN RICH *et al.*
} In Equity.

The separate answer of Benjamin Rich to the amended bill of the complainants in this cause having in some way been lost from the papers in this cause, the said Benjamin Rich this day produced a copy of said answer and asked leave to file the same, which was granted, and thereupon the same was thereby filed.

The copy of the answer of Benjamin Rich referred to in the foregoing order is in words and figures as follows, to wit :

279 To the honerable judges of the circu-t court of the United States for the district of West Va. :

The separate answer of Benjamin Rich to an amended bill of complaint exhibited against him and others in this honerable court by Tomlin Braxton and others.

Respondent, for answer to so much and such parts of said amended bill as has not heretofore been answered by his answer to the original bill, much of w-ich has been by said amendment restated and recharged, answers and says :

First. That he has no personal knowledge of the grants and deeds of conveyance to the said Caperton of the Morris tract of 153,900 acr-s, the Abner Cloud tract of 5,000 acr-s, the A. B. and D. B. Layne tract of 2,738 acr-s, and the Austin Hollister tracts of 9,330 and 5,938 acr-s, or where th-y are situated, or w-ether any titles passed thereby to them or either of them, but denies that the said Caperton acquired title thereunder to any of said lands, if the same or any or either of them are within the said two tracts of 100,000 or 58,000 acr-s mentioned in said bill, and especially denies that he died seized of any of said tracts first named and requires proof of any such title in said Caperton at the time of his death and prior thereto.

Second. Respondent admits that whatever title, if any, the said Caperton may have had to the 5,000 acr-s, 2,738 acr-s, 9,330 acr-s, and 5,938 acr-s in Webster county did become forfeited to the State of West Virginia prior to the year 1881, but respondent does not admit that the heirs of the said Caperton or any one else for them

or for any one else has since 1881 redeemed such forfeited titles from the State. On the contrary, he denies that any title
280 w-ich the said State may have had prior to 1881 by reason of forfeiture has been redeemed by the plaintiffs for any portion of said lands w-ich are within the boundaries mentioned in said bill and claimed by respondent.

Respondent also admits that the 41,171½ acr-s *was* forfeited to the State of West Va. prior to 1881, so far as the said Caperton or his heirs or others claiming under him may have had title thereto, but denies that there has been any redemption thereof w-ich could revest them or any of them with title to said land or any part thereof w-ich was included within either of said tracts of 100,000 acr-s or 58,000 acr-s claimed by the respondent, nor is it true that the said plaintiffs are the owners of either of said tracts or any part thereof within the boundary of defendants' said claim or have any title thereto.

Third. Respondent does not know w-ether the plaintiff- have, since the filing of their original bill, procured more full and ac-urate information in relation to the entry of said McClary and Banks tracts in Webster county in the year 1868, nor from the allegations made in relation thereto in the amended bill has he any reason to believe that their information is either more full or ac-urate. Respondent can't say what the said G. P. Shreve may have conceived and executed in relation to the entry of said tracts for the year 1868 nor when he so conceived or however fraudule-t such conception may have been or any act done in relation thereto, but respondent, neither before nor since said sale, had any knowledge or information in relation thereto, either as to what he conceived or did or with whom he associated himself in relation thereto, if any one; but respondent fully believes that neither the said G. P. Shreve
281 nor any one else associated with him for any purpose or matter had anything whatever to do with the entry of either of said tracts on the assessor's books in 1868 or the return thereof of the same as delinquent for that year, and for this reason and the want of any personal knowledge to the contary denies the truth of the said charge and calls for full proof thereof; and respondent fully believes that the said G. P. Shreve was equally innocent of any fraudulent design or purpose or agency in the sale of either of said tracts of land, or that he was in any way associated with any other person in the sale or purchase of either of said tracts of land any further than hereinafter stated and admitted, and he denies the truth of any statements to the contrary and calls for full proof thereof. Respondent admits that on the day of the sale of the 58,000-acre tract he agreed to and did purchas- jointly with said Shreve and Albert Owen that tract of land, but denies that he was in any way associated with either of them or any one else in the purchase, in 1869, of the 100,000-acre tract charged in the name of McClary, and no further or otherwise was respondent in privity with any one in relation to the purchase of either of these tracts of land in 1869 or with any matter or thing relating thereto, and any things to the contrary charged or imputed to him in said original or amended

bill are distinctly denied, and his answer to the original bill filed in this cause is herein refer-ed to as part of this answer and prayed to be received and treated as such. Respondent does not know whether either of said tracts of land was entered for and assessed with
282 taxes for any other year than 1868, nor does he know that they were not so entered. He had not then and he has not now any information on this subject, and can only say that at the time of his purchase he was under the belief that the whole subject of taxation was under the controll of assessors and agents of the State charged with the duty of assessing the lands in such a way as to pass the title by a sale and conveyance and had supposed these officers and agents had discharged their duty faithfully, and that every proceeding necessary to that end and in a lawful manner had been done by them.

Fourth. Respondent does not know personally what facts would constitute a forfeiture of these two tracts of land by the laws of Virginia prior to 1832, either for the non-payment of taxes or non-entry (the alleged cause of the forfeiture thereof), so that by the constitution of West Va. of 1863 and the statute of said State the title thereof would be transfer-ed to & vested in said State, neither can he say whether the allegation in the amended bill that the lands were so forfeited is true or not, but he requires proof thereof from the plaintiff; also that they, said Banks and McClary, are dead, or had during their lives conveyed the said lands to others, because this respondent has no personal knowledge on this subject other than the records in Webster — of a deed to Clifford Viscount De Flury, and can't therefore admit or deny the allegation.

Fifth. Respondent does not know and therefore cannot admit that these two tracts of land where never entered and assessed with taxes in Webster county nor any other county, nor that there was no lien upon said lands for unpaid taxes. He does not admit that sec. 28 of chap. 118 of the Acts of 1863 was the only one in force in 1868 in relation to the entry of said lands, or that it prescribed the whole duty of the assessor on the subject, but is advised that other sec-
283 tions of the same chapter equally prescribe and direct the duty of the assessor. Immediately following the 28th section of the chapter refer-ed to is the section 29 in these words, viz: "The preceeding section shall not, however, be construed to subject a *bona fide* purchaser of such land to the arrears of such taxes except from the date of his title thereto;" nor is it admitted by this defendant that the said statute nor even the 28 section thereof as the same is construed by the following section (a proviso thereto) was violated in any material respect; but, so far as he knows or believes, the whole duty of the assessor was faithfully performed in relation to the entry of said land. Neither does he admit that the said entries or either of them was nul- and void so that they did not or could not operate or assist in confer-ing title upon the purchaser at said sale.

Sixth. It is not true that in any way or for any purpose respondent and said Shreve and Conrow or either of them caused or procured the said tract of 100,000 — to be left off the land books for the

year- 1869 and 1870, and the tract of 58,000 acres to be left off for the years 1869, 1870, & 1871, nor was the same by their procurement left off the said books for these years.

Seventh. This respondent was at the court-house of Webster county in 1869, at the time said lands were sold, and the said G. P. Shreve & Albert Owen were also there at the same time, but neither of them attended the said sale as an associate of his in any enterprise or undertaking whatever, nor was this respondent then associated with any one, nor did he become associated or interested with either said Shreve or Owen until on the day of said sale of the 58,000 acres, when he agreed to and did purchase jointly with the said tract of 58,00- acres.

Eighth. This respondent knows nothing of any ar-angement or association between said Shreve and persons from Bellefonte,
Penna., or from Baltimore or elsewhere, nor of any such
284 being at said sale with said Shreve or of such an examination of the list of land for sale and finding the words "taxes paid" underwritten on said list opposite the tract- of 100,000 acres and 58,000 acres, or that such words were so written on said lists. He denies that he wrote the said words or any other on said list or procured others to do so, nor does he believe that any one else did so write them or that any one was influenced thereby if they where so written, and of this he calls for full proof.

Ninth. The allegation in the bill that respondent and his associates obtained controll of the sheriff who made the sale—had it all their own way, selected a favourable time when no one was paying attention thereto to make the sale—is both false and malicious, and no belief in its truth is held by either of the plaintiffs or their counsel, as he verily believes.

Tenth. This respondent admits that he after his purchase assigned to said Thornton Conrow, now dead, one-half of the tract of 100,000 acres. He also admits that after said purchase he did procure from the surveyor of said county of Webster reports and descriptions of said two tracts of land, w-ich as the purchaser of the land he was required to do, and that he also procured from the recorder of said county separate deeds for the said tracts in pursuant to the laws of the State. In both these acts he believed he was in the exercise of his legal rights and still so believes; but it causes him no surprise that these acts are charged by complainants against him as fraudulent after what had preceeded them in their bill, since a persistant pursuit of an uncharitable purpose is likely to occasion such mental obliquity that everything is colored by it and appears not like it does to a sound mind.

Eleventh. This respondent admits that about the time he received the deed from the recorder of the McClary tract to
285 himself & Conrow, which was after the time (as he is informed) fixed or appointed by law for the assessor's land tax books to be made out and delivered by him to the proper officer for the year 1870, he learned for the first time and through the recorder that a deed for the same land which had been so conveyed to him & Conrow, known as the McClary tract of 100,000 acres, from some

person to one Clifford Viscount De Flury, had been placed on record in the same county, reciting therein sundry alienations down to the grantor from said McClary. He admits that, as he is informed and believes, it was then too late to make a legal entry in said lands for the year 1870, and that no entry thereafter was made for that year; but it is not true that the said tract of land was not entered on the land books of Webster county for the year 1870 by the proper officer and at the proper time in the name of said De Flury, nor is it true that the said land was not returned delinquent by the sheriff for the said last-named year. On the contrary, the said land was entered on said land book, which was returned to the auditor by the assessor; that it was entered thereon in the proper place and at the proper time for said year, and in all respects in conformity to law on that subject, and that the same land was returned by the sheriff of Webster — as delinquent for that year, notwithstanding any certificate exhibited by plaintiffs with their bill. The allegation in the plaintiffs' bill that a forgery had been committed by respondent upon the land books in the auditor's office is as true as the other allegations therein made against him of fraud and conspiracy; that there is not one word of truth in a single statement made in reference to the said land books in the auditor's office. It was not only not forged or in a single instance or particular altered by re-
286 spondent, *for* he never saw said book until after the filing of plaintiffs' bill charging such forgery, nor does he believe that said Conrow ever saw it or heard of its having been forged, and that *is* is "perfectly apparent" to the plaintiff that a forgery has been committed on this book, whilst whol-y untrue, can be accounted for as a delusion arising from a continued strain on a mind not well balanced, but bent on the accomplishment of a particular purpose without care for the method to be used therein. Respondent believes that nothing more than an inspection of the book will be needed to satisfy any one not troubled with mental obliquity that there is nothing unusual about the book, much less an appearance of forgery.

Twelfth. Respondent denies that he illegally or fraudulently or in any way whatever caused or procured the sale of the said 100,000 acres to be made by the sheriff at the tax sale in the year 1871, and he fully believes that the said Conrow did not in any way, directly or indirectly, cause or procure said sale to be made; but at the said sale in 1871 of said tract of 100,000 acres he and said Conrow, who were then the joint claimants of said land and owners thereof under the former sale thereof in the name of said McClary, did purchase the same for their joint benefit and in their joint names; but it is not true that there had been no entry and assessment of said lands for the year 1870, nor is it true that there had been no return of the same as delinquent for that year. It is true that respondent and said Conrow did take the necessary steps required by law to obtain a deed for said lands as the purchasers thereof at said last sale, but without fraud.

Thirteenth. Respondent admits that he and said Conrow
287 conveyed to Ferd-nand F. Sharp one undivided third part of

said tract of 100,000 acres of land, and he believes the several other conveyances mentioned in said bill are as stated therein.

Fourteenth. Respondent says that he claims no tract of land w-ich is cor-ectly described as 58,000-acre tract, but has since 1869 claimed title to a tract of 58,500 acres w-ich was sold that year for the taxes of 1868 in the name of Henry Banks, and, thinking that the plaintiffs have been referring to the Banks tract of 58,500 acres owned and claimed by respondent, he has framed his answer accordingly; but, should he be mistaken in this, asks to substitute for anything he may have said in relation to the 58,000-acre tract a denial of any ownership thereof or interest therein or any knowledge thereof.

Fifteenth. It is not true, as he is informed and believes, that the said deeds and contracts and leases or either of them are inoperative and void because tainted with fraud or otherwise —.

Sixteenth. This respondent denies all fraud and combination and again refers to his separate answer filed to the original bill herein, and asks that the same be read as an answer to all matters alledged in plaintiffs' bill and repe-ted in said amended bill w-ich are not otherwise herein answered, and all other things not admitted by respondent he asks and requires shall be proven.

And, having fully answered, prays to be hence dismissed with his costs.

(Signed) BENJAMIN RICH.

C. BOGGESS, *Counsel.*

STATE OF WEST VIRGINIA, *County of Wood,* } *To wit:*

Benjamin Rich, whose name is signed to the foregoing
288 answer, being by me first duly sworn, says that the facts and allegations therein contained are true except so far as the same are therein stated on information, and so far as they are stated on information he believes them to be true.

(Signed) BENJAMIN RICH.

Taken, sworn to, and subscribed before me this the 4th day of February, 1885.

J. W. VANDERVORT,
Notary Public for Wood Co., West Va.

The above-named Benjamin Rich was this day sworn in open court and on his oath deposed that the foregoing answer, except the certificate of the verity of the contents, is a substantial copy of the original.

Feb'y 5th, 1885.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

And on another day, to wit, on the 7th day of February, 1885, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Chancery.

The plaintiffs this day tendered a second amended and supplemental bill in this cause and making new parties, to wit, the unknown heirs and devisees of the defendant Thornton Conrow, to this suit, which, on their motion, they are allowed to file, and the same is filed accordingly; and process is awarded against all the defendants to said bill, returnable at rules to answer the same, and this cause is continued.

288½ The second amended and supplemental bill referred to in the foregoing order is in words and figures following, to wit:

289 In the Circuit Court of the United States for the District of West Virginia.

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others. } In Chancery.

The second amended and supplemental bill of complaint of Tamlin Braxton and Mary E., his wife, late Mary E. Caperton; William A. Gordon and Harrietta C., his wife, late Harrietta C. Caperton; Malinda C. Patton, widow of James F. Patton, deceased, late Malinda C. Caperton; Robert Stiles and Lelia C., his wife, late Lelia C. Caperton; E. J. Caperton, Allen Caperton, and Ella Caperton, citizens and inhabitants of the State of West Virginia, plaintiffs,

against

Benjamin Rich, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Randolph Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Myers, Jesse Hammons, and Adonijah H. Cogar, and Burtis Barber, executors of the last will and testament of Thornton Conrow, deceased, and the unknown heirs and devisees of said Conrow, deceased, citizens and inhabitants of the State of Pennsylvania, defendants, filed in the circuit court of the United States for the district of West Virginia, sitting at Parkersburg, in said district.

290 To the honorable judges of said court, in chancery sitting:

Your plaintiffs Tamlin Braxton and the plaintiffs above named respectfully complain and say that heretofore, to wit, at the September rules, 1881, they, together with James F. Patton, who has since died, filed their original bill in this cause in the circuit court of Webster county, West Virginia, and such proceedings were had therein in said court that the said bill was regularly taken for confessed and set for hearing in said court as to all the defendants who were parties to said bill, and that afterwards, on the 3d day of April, 1882, the defendants Andrew Wayne, Thomas Myers, Jesse Hammond, and A. Dunlap Cogar appeared and answered said bill, and on the 3d day of April, 1882, on a petition of a partition of the

defendants named in said bill, this cause was removed into this court to be here heard and determined; that since the said removal of this cause into this court the said James F. Patten, husband of the plaintiff Malinda C. Patten, has departed this life, but that, inasmuch as he was only a mere formal party to this suit and had no personal interest in the lands in question herein, it is not deemed necessary to have this suit revived in the name of his heirs-at-law; and the above-named plaintiffs, further complaining, aver and charge and say as follows:

That in the month of July, 1876, the Honorable Allen T. Caperton, then a Senator of the United States, departed this life intestate, seized and possessed of the real estate hereinafter mentioned and described, situate in this State, principally in the counties of
291 Nicholas and Webster, and leaving the plaintiffs Mary E. Braxton, Harrietta C. Gordon, Malinda C. Patten, Lelia C. Stiles, E. J. Caperton, Allen Caperton, and Ella Caperton his only children and heirs-at-law him surviving.

That the said Allen T. Caperton derived his title to the said real estate which is the subject of controversy in this suit as follows: On the 28th day of March, 1795, the Commonwealth of Virginia by letters patent granted to Robert Morris 153,900 acres of land situate in the then county of Greenbrier, Virginia, but now in the counties of Greenbrier, Nicholas, and Webster, in the State of West Virginia; a copy of which patent was filed with said former amended and supplemental bill as Exhibit "No. 34," but which has since been taken from the papers herein. Said exhibit or a substituted copy thereof will be filed herewith as soon as it can possibly be obtained as a part of this bill, marked Exhibit "No. 34."

That on the 13th day of March, 1797, the said Robert Morris and wife, by deed, duly executed and acknowledged and since duly recorded, conveyed the said 153,900 acres of land, among other tracts, to William Crammond; a duly certified copy of which deed, with copies of the certificates of acknowledgment and recordation thereon endorsed, is herewith filed as part of this bill, marked Exhibit "No. 35."

That on the 28th day of October, 1814, the said William Crammond and wife, by deed, duly executed and recorded, conveyed to Thomas Astley, among other lands, the said 153,000 acres
292 of land conveyed to him by the — Robert Morris and wife as aforesaid; a duly certified copy of which deed, with copies of the certificates of acknowledgment and recordation thereon endorsed, is herewith filed as part of this bill, marked Exhibit "No. 36."

That prior to the 10th day of December, 1840, the said Thomas Astley died seized and possessed of the said tract of land of 153,000 acres and intestate, leaving his widow, Sarah H. Astley, and his daughter, Sophia, who intermarried with Littleton Kirkpatrick, his only child and heir-at-law him surviving, and that on said 10th day of December, 1840, the said Littleton Kirkpatrick and the said Sophia, his wife, late Sophia Astley, and the said Sarah H. Astley, the widow of said Thomas Astley, by deed bearing date on that day, duly executed and recorded, conveyed to Henry Crammond, among other lands,

the said tract of 153,000 acres, of which the said Thomas Astley died seized and possessed as aforesaid; a duly certified copy of the said deed, with copies of the certificates of acknowledgment and recordation thereon endorsed, is filed as part of this bill, marked Exhibit "No. 37."

That on the 21st day of December, 1842, the said Henry Crammond, by deed, duly executed and recorded, conveyed to John Williams the said tract of land of 153,000 acres conveyed to him as aforesaid; a duly certified copy of which deed, with copies of the certificates of acknowledgment and recordation thereon endorsed, is herewith filed as part of this bill, marked Exhibit "No. 38."

293 That on the 21st day of February, 1850, the said John Williams and wife, by deed, duly executed and recorded, conveyed to the said Allen T. Caperton (now deceased as aforesaid) 77,104 acres of the said 153,000 acres of land so granted to said Robert Morris as aforesaid, and that said Caperton died seized and possessed of the same to the extent hereinafter mentioned. A duly certified copy of said deed, with copies of the certificates of acknowledgement and recordation thereof endorsed thereon, marked Exhibit "No. 39," was filed with said amended and supplemental bill, which has since been taken from the papers in this cause, but the same or a substituted copy thereof, marked Exhibit "No. 39," will be filed as part of this bill as soon as it can possible be obtained.

That on the 10th day of March, 1790, the Commonwealth of Virginia, by letters patent bearing date on that day, granted to Abner Cloud 5,000 acres of land in the then county of Harrison, in the State of Virginia, but now in the county of Webster, in the State of West Virginia. A copy of said patent was filed with said amended and supplemental bill, marked Exhibit "No. 12," which has since been taken from the papers in the cause, but the same or a substituted copy thereof will as soon as possible be filed as part of this bill, marked Exhibit "No. 12."

That the county of Nicholas was afterwards created, in part composed of territory taken from the said county of Harrison, and thereby the said 5,000 acres was included in said county of

294 Nicholas, in which county it afterwards, in due form of law, became forfeited to the Commonwealth of Virginia and was, in due form of law, sold by John Brown, commissioner of delinquent and forfeited lands for said county of Nicholas, under a decretal order of the circuit superior court of law and chancery for the said county of Nicholas, made on the 8th day of April, 1841, at which sale the said John Williams hereinbefore named became the purchaser of said 5,000 acres; which said sale and purchase was by a decretal order of said last-named court, made on the 9th day of September, 1842, in due form of law confirmed. A duly certified copy of said order of sale is found on pages 13 & 14 of the paper herewith filed as part of this bill, marked Exhibit "No. 1," and a like copy of said order confirming said sale is found on page 15 of said Exhibit "No. 1." A like copy of the order of said last-named court appointing the said John Brown commissioner of delinquent and forfeited lands for said Nicholas county is found on pages 2 and

3 of said Exhibit No. 1; all of which said copies are asked to be considered and read as parts of this bill.

That on the 20th day of June, 1843, the said John Brown, as such commissioner of delinquent and forfeited lands as aforesaid, conveyed by deed of that date, duly executed and recorded, the said tract of land of 5,000 acres to the said John Williams. A duly certified copy of the deed, with copies of the certificate of acknowledgement and recordation thereof endorsed thereon, are filed with
295 *with* said amended and supplemental bill, marked Exhibit "No. 17," which has since been taken from the papers in this cause, but the same or a substituted copy thereof will be herewith filed as part of this bill, marked Exhibit "No. 17," as soon as it can possibly be obtained.

That the said John Williams, by deed bearing date on the 21st day of February, 1850, duly executed and recorded, conveyed the said 5,000 acres of land to the said Allen T. Caperton, and that said Caperton was seized and possessed of the same at the time of his death. A duly certified copy of said deed, with copies of the certificates of acknowledgement and recordation thereof thereon endorsed, was also filed with said amended and supplemental bill, marked Exhibit No. 21, which has since also been taken from the papers in this cause, but the same or a substituted copy of said deed will be filed herewith as part of this bill as soon as it can possibly be obtained, marked Exhibit "No. 21."

That on the 1st day of September, 1851, the Commonwealth of Virginia, by letters patent bearing date on that day, granted to A. C. & D. B. Layne 2,738 acres of land situate in the then county of Randolph, in the State of Virginia, but now in the county of Webster, in the State of West Virginia, said last-named county having since been created in part from territory taken from said county of Randolph. A copy of this patent was filed with said amended and supplemental bill, marked Exhibit "No. 29," which has since been taken from the papers in this cause, but the same or a
296 stituted copy thereof will be filed herewith as part of this bill, marked Exhibit "No. 29," as soon as it can be obtained.

That the said A. C. Layne, by deed bearing date the 18th day of March, 1856, duly executed and recorded, conveyed to the said D. B. Layne his one undivided half of said 2,738 acres. A duly certified copy of this deed, with copies of the certificates of acknowledgement and recordation thereof thereon endorsed, was filed with said amended and supplemented bill, marked Exhibit "No. 30," but which has since been taken from the papers of this cause, but the same or a substituted copy of said deed will as soon as possible be filed herewith, marked Exhibit "No. 30."

That the said D. B. Layne and wife, by deed bearing date the 12th day of April, 1859, duly executed and recorded, conveyed the whole of the said tract of land of 2,738 acres to the said Allen T. Caperton, and that said Caperton was seized and possessed thereof at the time of his death. A copy of this deed was filed with said amended and supplemental bill, marked Exhibit "No. 31," and which has since been taken from the papers of this cause, but the same or a substi-

tuted copy thereof, with the certificates of the acknowledgment and recordation thereof thereon endorsed, will be filed herein as part of this bill, marked Exhibit No. 31.

That the Commonwealth of Virginia, by letters patent bearing date the 1st day of November, 1855, granted to Austin Hollister
297 a tract of land of 9,330 acres situate in the then county of Randolph, in the State of Virginia, but now in the county of Webster, in the State of West Virginia. A copy of this patent was filed with said amended and supplemented bill, marked Exhibit "No. 28," and which has since been taken from the papers of this cause, but the same or a substituted copy of said patent will be filed herewith as part of this bill as soon as it can be obtained, marked Exhibit "No. 25."

That the Commonwealth of Virginia, by letters patent bearing date the 1st day of February, 1858, granted to the said Austin Hollister another tract of land of 5,938 — situate in the said county of Randolph, Virginia, but now in said Webster county, West Virginia. A copy of this patent was filed with said amended and supplemental bill, marked Exhibit "No. 26," and which has since been taken from the papers of this cause, but the same or a substituted copy of said patent will be herewith filed as part of this bill as soon as it can be obtained, marked Exhibit "No. 26."

That the said Austin Hollister and wife, by deed bearing date on the 12th day of February, 1859, duly executed and recorded, conveyed to the said Allen T. Caperton 9,311 acres of the said tract of 9,330 acres so granted to him as aforesaid and the whole of said tract of 5,938 acres so granted to him as aforesaid. A duly certified copy of this deed, with copies of the certificates of the acknowledgment and recordation thereof endorsed thereon, was filed with said amended and supplemental bill, marked Exhibit "No. 28,"
298 and has since been taken *taken* from the papers of this cause, but the same or a substituted copy of the said deed will be herewith filed as part of this bill as soon as it can be obtained, marked Exhibit "No. 28," and the said Allen T. Caperton died seized and possessed of the said tracts of land conveyed to him by said last-named deed.

That the said tracts of land of 5,000 acr-s, 2,738 acres, 9,311 acres (called 9,330 acres), and 5,938 acres situate in the said county of Webster, either before or after the death of the said Allen Caperton and prior to the year 1881, were returned delinquent and sold for the non-payment of taxes thereon and purchased by the State of West Virginia, and afterwards became forfeited to the said State by the failure to redeem the said tracts or any of them within the time prescribed by law; that after the said tracts of land became so forfeited these plaintiffs, as the heirs-at-law of the said Allen T. Caperton, dec'd, in pursuance of the statute in such cases made and provided, filed their petition in the circuit court of the said county of Webster to redeem the said tracts of land and each of them from the said forfeiture, and produced to the said court full and satisfactory proof that they had a good and valid title to said tracts of land and each of them superior to all others at the time said forfeiture occurred; and

thereupon the said court, by an order and decree made and entered on the 5th day of August, 1881, allowed these plaintiffs to pay in the manner prescribed by law all the taxes, interest, damages, and costs charged and chargeable on and against said tracts of land and
299 each of them, and thereby to redeem the same from the said forfeiture. A duly certified copy of said order and decree was filed with said amended and supplemental bill, marked Exhibit "A," and has since been taken from the papers in this cause, but the same or a substituted copy of said order and decree will be herewith filed as part of this bill as soon as it can be obtained, marked Exhibit "A," and that these plaintiffs, in pursuance of said order and decree, did pay to the proper authorities and persons all the taxes, interest, damages, and costs charged or chargeable on or against the said several tracts of land and each of them, including the year 1880, and did thereby then and there redeem said tracts of land and each of them from the said forfeiture, and the said tracts of land and each of them were, by and in pursuance of the said order and decree of said court, entered on the land books of said county of Webster in the name of Allen T. Caperton's estate and charged therein for taxes for the year 1881, and they have been so charged with taxes from that time to the present, and these plaintiff- have paid all the taxes so charged on said tracts of land and each of them for each and every year since the year 1880; and these plaintiffs now aver and say that they, or such of them as are the heirs-at-law and children of the said Allen T. Caperton, became seized and possessed in fee of the said tracts of land and each of them on the death of the said Allen T. Caperton as his
300 heirs-at-law, and that at the time of the commencement of this suit they were and still are the only lawful owners of the said tracts of land and each of them.

That the said Allen T. Caperton in his lifetime sold and conveyed portions of said tract of land of 77,104 acres, conveyed to him by the said John Williams, by reason whereof he owned but 41,171½ acres thereof at the time of his death, which said 41,171½ acres, either before or after the death of said Caperton and before the year 1881, *was* returned delinquent for the non-payment of taxes thereon and *was* sold for said taxes and purchased by the State, and that the said tract, not being redeemed in the time acquired by law, became forfeited to the State of West Virginia.

That after the said tract of 41,171½ acres so became forfeited these plaintiffs, as the heirs-at-law of the said Allen T. Caperton, dec'd, in pursuance of the statute in such cases made and provided, filed their petition in the circuit court of Nicholas county, wherein said forfeiture occurred, to redeem the said tract of land from said forfeiture, and produced to the said court full and satisfactory proof that they, the said children and heirs-at-law of the said Allen T. Caperton, dec'd, had a good and valid title to the said 41,171½ acres of land superior to all others, and thereupon the said court, by an order and decree made and entered on the 11th day of August, 1881, held and decided that these plaintiffs, who are the heirs-

at-law of Allen T. Caperton, dec'd, had such good and
301 valid title to said tract of land as is hereinbefore stated, and that by reason thereof they had the right to redeem the said tract of 41,171½ acres, together with the other lands in the said petition mentioned, from said forfeiture, and gave them the right and privilege of doing so. A duly certified copy of said order and decree is herewith filed as part of this bill, marked Exhibit "B."

And that these plaintiffs, in pursuance of said order and decree, paid to the proper authorities or persons all the taxes, interest, damages, and costs charged and chargeable on and against said tract of land, including the year 1880, and did thereby then and there redeem said tract of land from said forfeiture, and the said tract of 41,171½ acres was, by and in pursuance of the said order and decree, entered on the land books of the said county of Nicholas for the year 1881 in the name of Allen T. Caperton's estate and charged thereon with taxes for the year 1881, and said tract has been so charged on said land books from that time to the present, and these plaintiffs have paid all the taxes on said tract for each and every year since the year 1880.

And these plaintiffs, who are the children and heirs-at-law of the said Allen T. Caperton, deceased, now aver and say that as such heirs-at-law they became seized and possessed of an estate in fee in the said 41,171½ acres of land on the death of the said Allen T. Caperton, and that at the time of the commencement of this
302 suit they were and still are the only true and lawful owners of said tract of land.

That since the filing of their said original bill and said amended and supplemental bill in this cause these plaintiffs have procured other, and they believe more full and accurate, information in regard to the combination and conspiracy charged in said bills and each of them, and have learned other and material facts bearing upon the question at issue in this cause which they did not know at the time of the filing of either of said bills, and which they desire to bring to the attention of the court.

And thereupon the plaintiffs, now further complaining, aver and charge as follows, viz:

That some time in the — 1867 or 1868, they are not certain which, John B. Shreve, of the county of Upshur, West Virginia, and not G. P. Shreve, as charged by mistake in the said original and amended and supplemental bills, having in his possession the books of entrys and surveys in the county of Randolph, Virginia, both before and after the year 1800, concocted a scheme to make money by the fraudulent and unlawful entry in the land books of Nicholas, Webster, Upshur, and Randolph counties of large tracts of land patented by the Commonwealth of Virginia prior to the year 1800 to sundry persons then known to him to be dead, and other surveys prior to said year to sundry persons for which no patents had been issued; and in order the more effectually to carry out his said scheme the said Shreve entered into correspondence on the
303 subject with several persons in the States of Maryland, Pennsylvania, and elsewhere.

That some time in the year 1868 the said Shreve came to an agreement with H. Brockerhoff, James Gilliand, and others of Pennsylvania, and later in said year he came to another agreement with one Albert Owens, of same State, which agreement was not communicated to the said Brockerhoff or any of his associates, and still later he made another agreement with some settlement of Baltimore, Maryland, which was for a considerable time kept a secret from all others.

That the details of said scheme of said Shreve and of said agreements were in substance as follows: That said Shreve should and would enter and cause to be entered on the land books of the several counties and — above named certain large tracts of land situated in whole or in part in some one of the said counties with the location and boundaries of which he professed to be acquainted, in the names of the patentees, where patents had issued, and in the names of the persons who had entered the same & had them surveyed where no patents had issued therefor.

That in pursuance of his said scheme and of the agreements aforesaid the said Shreve, without any request or authority from any one interested therein and in plain violation of law, fraudulently and corruptly caused to be entered on the land books of said county of Webster and charged with taxes for the year 1868 the following-named tracts of land, among others, to wit:

A tract of 100,000 acres granted by the Commonwealth of
304 Virginia to William McClary by patent bearing date the 21st day of January, 1796. A copy of this patent, duly certified, is herewith filed as part of this bill, marked "W. M. C."

By reference to Exhibit "E," filed with the original bill herein and found in the record of the State court filed in this court, it will be seen that said tract of land was entered on said land books and sold for taxes in the name of William McClary. Said Exhibit "E" is here referred to and prayed to be taken and considered as part of this bill. Also a tract of 58,000 acres in the name of Henry Banks, as appears by Exhibit "F" filed with said original bill and found in the said record of the State court, which exhibit is here referred to and asked to be read and considered as part of this bill; also a tract of 12,500 acres surveyed on the 11th day of May, 1795, as claimed by the defendants, in the name of George Messingbird, but whether such survey was in fact made these plaintiffs have no knowledge, but they are informed and believe and aver and charge that if it was made as claimed no patent ever issued to the said George Messingbird or to any one else on said survey; also a tract of 105,000 acres, in the name of James Welsh, claimed by the defendants to have been surveyed for said Welsh on the 1st day of June, 1795, but whether any such survey was ever made these plaintiff- are not informed, but they are informed and believe and so charge and aver that if in fact any such survey ever was made no patent was ever issued thereon to the said Welsh, and if a
305 patent ever issued on said survey to any other person as the assignee of the said Welsh these plaintiffs have no knowledge of it; and they further aver and charge that the said James Welsh

never had any title of any kind to the said tract of land or any part of it.

That long before and at the time said tracts of land were so entered and charged with taxes by the said John B. Shreve as aforesaid the said several persons in whose names said tracts were so entered had died, which fact was necessarily well known at the time to the said Shreve, in view of the lapse of time since said surveys were made, and that the said Shreve intentional-y made said entries in their names in order that said lands would certainly be returned delinquent for the non-payment of the taxes so entered thereon for the year 1868 by reason of there being no person or persons interested in paying the taxes in the names of the said persons or either of them, and that when so returned and sold for the non-payment of said taxes they might and would be purchased by one or more of his associates in fraud.

That, as planned and contemplated by the said Shreve, the said tracts of land and each of them were returned by the sheriff of the said county of Webster delinquent for the non-payment of the taxes so charged thereon, and on the 24 day of September, 1869, they and each of them were sold for said taxes, with the interest and damages thereon, at the court-house of the said county of Webster, and
306 were purchased at said sale by the following-named persons, to wit:

The said tract of 100,000 acres, sold in the name of William McClary, by the said Albert Owens hereinbefore mentioned, G. P. Shreve, the son of the said John B. Shreve, and the defendant Benjamin Rich, for the sum of $41.82, as appears by said Exhibit "E," hereinbefore referred to; the said tract of 58,000 (or 58,500) —, sold in the name of Henry Banks, by the same persons who bought said 100,000 acres, as appears by said Exhibit "F," hereinbefore referred to, for the sum of $11.20.

The said tracts of 12,500 acres, sold in the name of George Messingbird, by the same persons, to wit, Owens, G. P. Shreve, and Rich, for the sum of $—, as will appear by a copy of the list of sales returned by the sheriff of said county, which will be filed as a part of this bill as soon as it can be procured, marked Exhibit "No. 44."

And the said tract of 105,000 acres, sold in the name of James Welsh, by the said Albert Owens, for the sum of $—, as will appear by a copy of the list of sales returned by said sheriff, which will be filed as part of this bill as soon as it can be procured, marked Exhibit "No. 45."

That the said tract- of land and each of them so entered on said land books as aforesaid, even if they had all been granted *to* the Commonwealth of Virginia to the persons in whose names they were so entered, had long before the formation of the State of West Virginia been forfeited to the State of West Virginia for the non-payment of the taxes thereon and for the failure
307 of the owners thereof or any of them to have the said taxes or any of them entered upon the land books of the proper counties and charged with taxes thereon, as required by the laws of said State, and have never been redeemed from such forfeiture.

That by reason of such forfeiture and by virtue of the laws of the restored government of Virginia and of the constitution and laws of the State of West Virginia the said tracts of land and each of them became and were the absolut*ly* property of the State of West Virginia from and after the date of the admission of said State into the Union, and the said tracts and each of them remained and were the absolut*ly* property of the State of West Virginia, so far as the claim and title of the said William McClary (or McCleery), Henry Banks, George Messingberg, & James Welch were concerned and so far as the same or parts thereof *but* not become the property of others under the law of Virginia and West Virginia at the time said tracts of land and each of them were entered on said land books by the said John B. Shreve as aforesaid; that neither of the said tracts of land had ever been entered and charged with taxes on the land books of Webster county or of any other county of this State in the name of any person whatsoever prior to the year 1868, when they were so entered at the instance of said Shreve as aforesaid.

That the only law in force in the State of West Virginia in the year 1868 under which lands not on the land books of any county could be entered thereon was section 28 of chapter 118 of the
308 Acts of the legislature of said State of 1863, which section prescribes the whole duty of the assessor in the matter, and under which he was required—

1. To ascertain that the lands were in his district.

2. To ascertain who had title to said lands by patent or otherwise.

3. To ascertain that said lands had not been previously entered in his land books, or, if entered, had been omitted therefrom for one or more years.

4. Then to make an entry of the land in his land books in the name of the owner.

5. If no assessment of the lands had been made, to make such assessment to the best of his judgment by reference to the assessed value of contiguous lands similarly situated.

6. No charge on the lands so entered when the quantity contained in one tract was more than one thousand acres, taxed at the rate imposed by law for each year in which the said lands had not before been entered in said land books from the year 1832, inclusive, if the patent therefore issued before that time, together with lawful interest on each year's taxes.

This act of 1863 was passed in part and the section referred to especially to carry out the provisions of the constitution of West Virginia of 1863 in reference to tracts of land of 1,000 acres or more forfeited to the State of Virginia and whereby the privilege was given to the owners of such tracts to redeem the same in five years from the adoption of said constitution. (See article IX of said constitution.)

309 That this statute was violated by the assessor of Webster county in about every one of its requirements in his entry, at the direction of said Shreve, of said tracts of land in his land books, and which were material to a legal and proper entry thereof on said book.

First. The said tracts of land were not nor was either of them so entered and charged on said land books by said assessor in the name of the owner thereof. He was required to ascertain who had the title to said lands by patent or otherwise, and as he entered them in the names of the original patentors and alleged patentees he was bound to know and did know from the date of the surveys thereof and of the patents, so far as they had been issued therefor, that all of the persons and each of them in whose names said lands were so entered were long before that time dead, and, in addition to this, the said tracts of land and each of them, with all the right, title, and interest of the said McClary, Banks, Messingbird, and Welch thereto, whatever that title might have been, was vested in and were the absolute property of the State of West Virginia at the time of said entries, and therefore the said tracts of land could not, nor could either of them, be lawfully entered by him on said land books and charged with taxes in the name of said State or of any individual whatever.

Second. The said assessor did not assess either of the tracts
310 of land so entered by him as to value as required by said statute, but assessed the tract of 100,000 acres at eleven cents per acre, the tract of 58,000 (58,500) acres at five cents per acre, the tract of 2,500 acres at — cents per acre, and the tract of 105,000 acres at — cents per acre, while the lands contig-ous to said tracts and similarly situated were at the same time assessed at an average of about 50 cents per acre.

These plaintiffs have but recently learned the facts herein stated in regard to the two last-named tracts, and they had no knowledge of the fact that said tracts interfered with these said lands hereinbefore mentioned until the survey ordered in this cause was made and completed late in the — 1884, and therefore they cannot now state the price per acre at which said lands were assessed, but they are informed and believe that they were assessed as low or lower than the others. They will, however, procure and file the evidence of said assessment as soon as it can be done, and mark the Exhibit "No. 46."

That said assessor knowingly and purposely made and entered said assessment to aid and assist the said John B. Shreve and his associat-s in the consum-ation of the said fraudulent and corrupt scheme hereinbefore mentioned, as the plaintiffs are informed and believe and so charge.

Third. The said assessor, in plain violation and disregard
311 of said statute and for the purpose of aiding and assisting the said Shreve and his associates as aforesaid, willfully and corruptly failed and omitted to charge the said tracts of land or either of them with the taxes and interest properly chargeable thereon for each of the years from and including the year 1832 to and including the year 1867, during all of which years no taxes were paid on either of said tracts of land, nor were said tracts of land nor either of them entered and charged with taxes on the land books of Webster county or any other county for the said years or either of them, but that each of said tracts were charged with taxes for the said year 1868

only. This of itself, as these plaintiffs are advised and believe and so aver and charge, rendered the said entry and charge on said land books inoperative, fraudulent, null, and void in law, and that such entry and charge could not and cannot in any way operate to confer or assist in conferring any *bona fide* title or claim, legal or equitable, in or upon a purchaser of either of said tracts of land at a sale thereof for the taxes so assessed thereon as aforesaid.

That in order to further carry out the said fraudulent and corrupt scheme of the said Shreve and his confederates therein with whom he had made contracts as aforesaid, and to enable the said last-named persons to purchase the said tracts of land at the smallest possible sum, the said Shreve fraudulently and corruptly caused and procured the said tract of 100,000 acres to be omitted from the land
312 books and not to be entered and charged thereon with taxes for the years 1869 and 1870, and, in fact, no taxes for said years or either of them have ever been charged or paid on said tract by the purchaser at the tax sale thereof or by any other person holding or claiming the same under, by, or through them.

And that for the like purpose and in like manner the said Shreve fraudulently and corruptly caused and procured the said tract of 58,000 (or 58,500) acres to be omitted from said land books by the assessor and not to be entered or charged with taxes thereon for the years 1869, 1870, and 1871, and, in fact, no taxes for said years or either of them have ever been charged or paid on said tract by the purchaser thereof at the tax sale, or by any other person holding or claiming by, through, or under them; and that for the like purpose and in the like manner the said Shreve fraudulently and corruptly caused and procured the said tract- of 12,500 acres and 105,000 acres to be omitted by the said assessor from the said land books and not to be entered and charged thereon for taxes for the years 1869, 1870, and 1871, and, in fact, no taxes for said years or either of them have ever been charged or paid on said last-named tracts or either of them by the purchaser thereof at the tax sale, or by any other person claiming under, by, or through them.

That the said tracts of land and each of them, together with a large number of other tracts which the said Shreve had in a
313 like manner and for a like purpose caused to be entered and charged with taxes on said land books, having been returned delinquent as aforesaid for the non-payment of the taxes for the year 1868, were certified by the auditor of West Virginia to the sheriff of Webster county for sale in the year 1869, and the same were accordingly advertised by the said sheriff for sale at the court-house of said Webster county on the 24th day of September, 1869, of which sale the said Shreve promptly informed his said associates, with whom he had made the contracts and agreements aforesaid, and that the said James Gilliand and some others of the associates of the said H. Brockerhoff, the said Albert Owen and some of his associates, including the defendant Benjamin Rich, who had shortly before that time became one of his associates for the purchase of the said lands, and, as the plaintiffs are informed, some others of his said associates, whose names are unknown to them, and one of the said

Baltimore parties, whose name is to them unknown, attended at said court-house on the day of said sale to bid for said tracts of land at said tax sale in pursuance of the said several agreements with the said Shreve, at which time and place the said John B. Shreve and his son, G. P. Shreve, who had also become one of the associates of the said Owens and Rich for the purchase of said lands, also attended.

That after arriving at the place of said sale the members
314 of the said Brockerhoff party in attendance became satisfied that the said Shreve had gone over to the said Owens and Rich party and to which his said son, G. P. Shreve, belonged, and, upon enquiry into the matter of persons acquainted in the country and with the laws of the State of West Virginia, they became further satisfied that the whole proceedings of the said John B. Shreve and his associates, who were cognizant of his objects and purposes in relation to said lands, was a fraud and a swindle, and they abandoned their said agreements with the said Shreve and declined to bid for any of said tracts of land so advertised to be sold; that when said parties arrived at the place of sale they found written on the said advertisement of sale op-osite a large portion of the tracts to be sold, including the four tracts herein specifically mentioned, the words "taxes paid," and it was this, in part, which put them upon enquiry as aforesaid.

That the gentlemen from Baltimore for some reason, preferable the same as above, also declined to bid for any of said lands, and so the combination or association composed of the said Albert Owens, G. P. Shreve, and Benjamin Rich and their associates had the field all to themselves in the bidding for said lands when they were sold and purchased by them, as hereinbefore stated; and these plaintiffs aver and charge that the said Owens, Rich, and G. P. Shreve and their associates and each of them at and before the time of the
315 said sale had notice of the objects and purposes, acts and doings, of the said John B. Shreve and of the said assessor of Webster county hereinbefore stated and charged, and that they and each of them combined with and aided and abetted the said John B. Shreve and the said assessor in all their said fraudulent acts and doings hereinbefore stated from the time they became respectively partners to said scheme of said John B. Schreve.

But these plaintiffs are advised and believe and so aver and charge that the whole of the acts, doings, and proceedings of the said John B. Shreve and of the other persons hereinabove and hereinafter named in entering said tracts of land and each of them on said land books and charging the same with taxes thereon, and in the return and sale of the same for the non-payment of taxes so assessed thereon, and the purchase thereof at said tax sale, and the return of said sale by the sheriff of said Webster county, and the survey and reports in relation thereto by the surveyor of said county, and the deed of conveyance of the said several tracts to the purchasers thereof and their assignment, were and are each and all of them fraudulent, null, and void in law, whether said purchasers at said tax sales had notice of the said fraudulent objects and pur-

poses, acts and doings, of the said John B. Shreve or not and whether — aided and abetted him intentionally or not.

That the doctrine of *caveat emptor* applied with all its force
316 to the sale and purchase of said lands at the time of such sale and purchase, and that the said purchasers and their associates were bound to take notice of the laws of the State of West Virginia in relation to the entry of annulled lands on the land books of the proper counties and of the State, of the title to the lands purchased by them at said tax sale, and of the constitution and laws of the State of West Virginia applicable thereto, and they were bound especially to take notice of the fact that all the right, title, interest, or claim which any or all of the persons in whose names the said lands were so entered and charged with taxes on said land books, and for the non-payment of which they were being sold, was in the State of West Virginia for the reasons hereinbefore stated; and they are further advised and believe and so aver and charge that neither of the purchasers of said tracts of land at the said tax sale nor any person claiming the same or any part thereof under, by, or through them acquired under the said purchase of said tracts of land or either of them or under the deed of conveyance of each of said tracts to said purchasers and their assignees any valid or *bona fide* title or claim of title, legal or equitable, to the said tracts of land or either of them or to any part of either of them, and that the title thereto, legal and equitable, so far as it has not been invested in other persons, still remains in the State of West Virginia.

317 And these plaintiffs, further complaining, aver and say that the said words "taxes paid" written on said notice of sale as aforesaid *was*, as they are informed and believe and so charge, written thereon by the said John B. Shreve or G. P. Shreve or by some one of their said associates at the instance of the said purchasers or some one of them for the purpose of preventing competition in the bidding for said lands at said sale, and that they had the effect intended.

That in addition to this the said tracts and each of them were in the mountains and in the woods and their boundaries were unknown to any person except to the said John B. Shreve and his said son and to his other associates, Owens and Rich, in said purchase, who had a knowledge thereof derived from the said John B. and G. P. Shreve.

That the fact of the forfeiture of these lands to the State was well known and understood in the county wherein their location might be, and no one in the State except the said J. B. Shreve and his said son regarded them worth looking after and buying.

And these plaintiffs, further complaining, aver and say that whatever interest the said William McClary (or McCleery) and the said Henry Banks may have had in said lands so charged & sold in their respective names was sold and conveyed by them to others many years before the formation of the State of West Virginia, and that said tracts and each of them were long before the said formation of said State perfected to the State of Virginia for the non-payment

of the taxes thereon and for the failure to have the same or
318 either of them entered and charged with taxes on the land books of the proper counties in the name of the person to whom they were so sold and conveyed or in the name of any person or persons holding under, by, or through them, and that said tracts of land nor have either of them ever been redeemed from such forfeiture by any one.

That after the purchase of said several tracts of land as aforesaid the said Benjamin Rich assigned to the defendant Thornton Conrow, named in the original bill, and who has since died, the one undivided half of said 100,000 acres; which assignment appears as Exhibit "G" filed with the plaintiffs' original bill, found in the record of the State court, and the same is here referred to as part of this bill. What became of the interests of the other two purchasers, Owen and G. P. Shreve, does not appear, so far as these plaintiffs have been able to ascertain, and that, as they no doubt supposed, as the last and crowning act in the consummation of the said fraudulent scheme, the said Benj. Rich and Thornton Conrow obtained from the record of Webster county, on the 28th day of September, 1870, what purports to be a deed of conveyance to them of the said 100,000 acres of land; a copy of which supposed deed, marked Exhibit "G," is found in the record from the State court and is here referred to as part of this bill.

That after the said sale of said 58,000 (or 58,500) acres the said Albert Owen transferred his interest therein to the said G. P. Shreve, as appears by Exhibit "H" filed with the original bill herein
319 and found in the record aforesaid, which exhibit is here referred to as part of this bill; and the said G. P. Shreve, as appears by the same exhibit, assigned all his interest therein to said Benjamin Rich, and that the said Rich, on the 28th day of September, 1870, procured from the recorder of Webster county what purports to be a deed for said tract of land, describing it a tract of 58,500 —, when it was ret'd, as hereinbefore stated, as a tract of 58,000. A copy of said supposed deed is found in the record aforesaid, also marked Exhibit "H," and the name is here referred to as part of this bill.

That after the sale and purchase of the said tract of 12,500 acres as aforesaid the said G. P. Shreve and Albert Owens assigned their interest therein to said Rich and Conrow, and on the said 28th day of September, 1870, they procured from the recorder of Webster county what purported to be a deed therefor to them. A copy of said deed, together with the evidence of assignment, will, as soon as it — possible be obtained, be filed herewith as part of this bill, marked respectively Exhibit- "J" and "K."

That after said sale and purchase of said tract of 105,000 acres the said Owen assigned his purchase of the same to said Rich, and said Rich assigned the one-half thereof to the said Thornton Conrow, and that on said 28th day of September, 1870, the said Rich and Conrow procured from the said recorder what purported to be a deed therefor. A copy of said supposed deed and the evidence of

said assignment will be filed herewith as part of this bill as
320 soon as the same can be obtained, marked Exhibit-"L," "T."

And these plaintiffs aver and charge that the said deeds and each of them and the survey and reports upon which they were in part founded were all procured and had as a part and consum-ation of the said fraudulent scheme and of the said agreements hereinbefore mentioned, and that the said Thornton Conrow prior to the procurement of said supposed deeds and, as they are informed and believe and so aver and charge, prior to the said sales of said tracts of lands for taxes became a party to the said intended fraudulent proceedings hereinbefore mentioned and charged; but they are advised and believe, and so charge and aver, that the said Thornton Conrow, regardless of his knowledge and intentions in the matter, could not and did not obtain any legal, valid, or *bona fide* title or claim to said tracts of land or either of them or to any part of them under the said supposed deeds or either of them by reason of the facts, allegations, and charges hereinbefore stated and set forth.

That after said supposed deeds were obtained as *as* aforesaid it was discovered by some one or more of said grantees in said supposed deeds that a paper purporting to be a deed conveying the said 100,000 acres of land sold in the name of Wm. McClary had been placed on the record of deeds in said county of Webster to one Clifford Viscount De Fleury, which discovery was made at too late a period to have the said tract of land entered
on the land books of Webster county and charged with
321 taxes for the year 1870. But delay was dangerous, and
so a plain and palpable fraud and forgery was committed by some one in the interest of the defendants by interlining the said tract of land into and on said land books, or a part of them at least, in the name of said De Fleury in a blank found thereon, but entirely out of place, and which clearly appears on the copy of said land book in the office of the auditor of this State by said entry and the errasures and alterations made therein to meet the case.

That the object and purpose of said entry was to have said tract returned delinquent for the taxes of the year 1870 and sold therefor in the year 1871 and purchased by said Rich and Conrow at such sale, all of which was done as contemplated; and on the 3d day of October, 1872, said Rich and Conrow fraudulently and unlawfully procured what purported to be a deed for said tract from the recorder of said county of Webster. A copy of said supposed deed is found in the records aforesaid, marked Exhibit "J," and the same is hereby referred to as part of this bill.

And these plaintiffs are advised and believe and so aver and charge that each and all of said deeds hereinbefore mentioned are inoperative, null, and void, as well for the reasons hereinbefore stated as for manifest errors and defects appearing upon the face of said deeds and upon the face of the records and proceedings in relation
thereto in the office of the recorder of Webster county at and
322 after the date of said supposed deeds and now in the office of
the clerk of the county court of Webster county.

A copy of the list of sales made by the sheriff of Webster county for the non-payment of taxes for 1870 *and* filed with the original bill in this cause, marked Exhibit "I," and found in the record aforesaid, and the same is here referred to as part of this bill.

That after the said supposed deed for the said 105,000 acres had been procured as aforesaid it was discovered either by the said Rich or Conrow that no patent had issued to the said James Welch for the said tract of land, but said Rich and Conrow, or one of them, at least, was again equal to the occasion, and they or one of them fraudulently and unlawfully caused the said tract to be entered on the land books of Webster county of 1874 as a tract of 65,734 acres in the name of Francis Highland and charged with taxes for the year 1874, and in the column where transfers are noted, as they are informed and believe, had an entry made showing a transfer from them to said Highland, when, in fact, no deed or other transfer of said land had been made by them to him; and these plaintiffs are informed and believe and so charge that said Rich or Conrow or both had been in some way informed that said tract had at some time been conveyed to said Highland, and hence the said ent-y thereof.

The said tracts so entered and charged as they so plan-ed they should be were returned delinquent and sold, and the said Rich became the purchaser thereof and afterwards assigned to said
323 Thomas Conrow and Walter Wood each the undivided third part thereof, and on the 30th day of October, 1876, said Rich, Conrow, and Wood procured what purported to be a deed of conveyance therefor to them from the clerk of the county court of Webster county. Copies of said entry, report of sale, and survey and of said supposed deed will be filed herewith as part of this bill as soon as they can be procured, marked Exhibit- "S," "T," "U," & "V."

And these plaintiffs are advised and believe and so aver and charge that if the said Francis Highland ever had any title to the said tract of land it had long years ago become forfeited to the Commonwealth of Virginia for the non-payment of taxes thereon and for the failure of said Highland to have the same entered on the land books of the proper county in his name and charged with taxes, and that for the reason as well as for all other reasons hereinbefore stated as to the other supposed deed herein mentioned said last-mentioned supposed deed is fraudulent, null and void, and conveys no title to the grantees thereof.

And in order to further show the magnitude and enormity of the said fraud and swindle perpetrated as hereinbefore stated by the said John B. Shreve and the defendants herein who were associated and confederated with him as aforesaid these plaintiffs aver and charge that in addition to the tracts of land so entered on said land books by the said Shreve as aforesaid and purchased as aforesaid six other tracts, amounting in the aggregate to 297,967 acres,
324 were at the same time placed on the said land books by him as aforesaid for the fraudulent purpose aforesaid and sold at the same time and place at which the others of said tracts were sold and purchased in each case by one or more of said defendants Rich,

Owens, and G. P. Shreve, making the whole quantity so purchased by them at said sale on the 24 September, 1869, 572,967 acres, all of which appears by the records now in the office of the clerk of the county court of Webster county.

That on the 3rd day of May, 1882, the said Rich and Conrow, with their wives, conveyed to the said Ferdinand Sharp, among other lands, the one undivided third part of all their interest and claim in and to the said tract of 100,000 acres, as appears by a certified copy of the said conveyance filed with the original bill of this cause as Exhibit "K," as is found in the record aforesaid, and the same is here refer-ed to as part of this bill.

That the said Rich and wife, by deed bearing date the December 30, 1875, conveyed to the defendant Abram Waltman an undivided one-eighth interest in the tract of 58,000 acres, as appears by a certified copy of said deed filed with said original bill, marked Exhibit "L," and is found in the record aforesaid, and the same is here referred to as part of this bill.

That by deed bearing date the 1st day of March, 1879, the said Conrow conveyed to the defendant Walter Wood, among
325 other lands, the undivided one-sixth part of the said 100,000 acres, as appears by a certified copy of said deed filed with the said original bill, marked "M," and is found in the record aforesaid and is made part of this bill.

That the said Rich and wife, by deed dated October 30, 1879, conveyed to the defendant D. S. Robinson the one undivided third part of the said 100,000 acres, in trust to secure the payment of a note of $3,210.00 drawn by said Rich and payable to his own order, as appears by a certified copy of said deed filed with said original bill as Exhibit "N," which is found in the record aforesaid, and the same is hereby referred to as part of this bill.

That by deed dated November 17, 1879, Joseph A. Thompson and James Woodzell, special commissioners, conveyed to the defendant Walter Wood, for himself, and the defendants Richard Wood, Edward Wood, George Wood, and Randolph Wood, among other lands, the certain one-sixth undivided title and interest in the aforesaid 100,000 acres of land, the same which had been conveyed on the 15th day of May, 1872, by the defendant Ferdinand R. Sharp, in trust, to the said Walter Wood, as is shown by a certified copy of said deed filed with said original bill as Exhibit "O," which is found in the record aforesaid and which is here referred to as part of this bill.

326 The said deed of trust from Ferdinand R. Sha-p to Walter Wood, referred to in said last-named deed, is not found in said record of the State court, but a certified copy thereof, if it can be found, will be filed herewith as soon as it can be procured, marked Exhibit "P."

The the said patent of William McClary, as will be seen by reference to the copy thereof herewith filed, was and is an inclusive grant and excepted from its operation 37,052 acres, and was issued on the 21st day of January, 1796, while the said patent to Robert Morris, under which the plaintiffs claim, was issued on the 25th

day of March, 1795, and included within its boundaries a large portion of said 100,000 — afterwards surveyed and granted to said McClary as aforesaid; and even if the said McClary (or McCleery), or any one claiming under —, had ever had the actual possession of the said 100,000 acres to the exclusion of all others, which they, however, never had, the plaintiffs are advised and believe and so charge that the title to the said 37,052 acres *is* excepted from the said patent would never have passed thereby to the said McClary or those claiming under him.

That the said 77,104 acres of said 153,900 acres so granted to Robert Morris as aforesaid, conveyed to the said Allen T. Caperton as aforesaid by the said John Williams and wife, also included a large portion of said 100,000 acres granted to said McClary, but how much of said 100,000 acres is so included these plaintiffs are unable to say, but the amount so included is largely over the said 37,052 acres.

327 That the said tracts of land of 100,000 acres, 58,000 acres, 2,500 acres, and 105,000 acres so claimed by the said defendants as aforesaid cover and include the whole of the lands so owned and possessed by these plaintiffs as aforesaid, and which descended to the plaintiffs Mary E. Braxton, Harrietta C. Gordon, Malinda C. Patton, Lelia C. Stiles, E. J. Caperton, Allen Caperton, and Ella Caperton at the death of the said Allen Caperton as aforesaid.

That the title of these plaintiffs to all of the lands herein described and claimed by them is good and valid both in law and equity, while the said pretended title of the said defendants and each of them herein stated and described is invalid, fraudulent, null, and void for the reasons herein stated and set forth, and still said pretended title of said defendants to all the land owned, held, and possessed by these plaintiffs as aforesaid and the boldness and effrontery with which the said defendants assert the same constitutes a serious and damaging cloud upon the title of these plaintiffs to these lands, and to such an extent, indeed, that, although these plaintiffs have found it necessary to sell these lands to pay the debts against the estate of said Allen T. Caperton, deceased, and have a decree of the circuit court of Monroe county in a suit brought in the name of the administrator of said estate for that purpose to sell the same, yet they have not been able to make any other than a conditional sale thereof dependant upon the removal of said cloud upon their said title.

328 That the defendant Andrew Wayne, as these plaintiffs are informed, claims to have purchased from some of the other defendants in this suit, but these plaintiffs are not informed as to which of them, by an executory contract, but whether verbal or in writing these plaintiffs are not informed, some 300 acres of said 58,000 acres a short time before the commencement of this suit, and he and the defendant Thomas Myers claim to be in possession thereof, but, if such is the fact, these plaintiffs have no knowledge in what capacity said Myers is so in possession, whether as tenant of some else or as purchaser, but they are informed and believe and so aver and charge that said Wayne has paid no part of the pur-

chase-money of said 300 acres, and that he declares his purpose not to do so until the title to said land is settled.

That the said Rich and some other of the claimants of said lands under said tax sales claim to have leased portions of said lands to defendant- Jesse Hammons and Adonijah H. Cogar, and claim to have put them in possession of a portion thereof a short time before the commencement of this suit, but of what portion, if such be the fact, these plaintiffs do not know, but they are informed and believe and so aver that said Hammons and Cogar claim to have been deceived by said Rich, and admit that his title or that of his associates is bad.

329 That said Thornton Conrow, one of the defendants in this suit, has departed this life pending the same, and his executors named in the caption of this bill have appeared herein and had the same revived against them as his said executors, but this suit has not been revived against the heirs and devisees of the said Conrow, and the names of the said heirs and devisees are unknown to these plaintiffs.

This plaintiffs therefor- pray that this suit be revived against the said unknown heirs and devissees of Thornton Conrow, and that they be made defendants herein; that the said Benjamin Rich and all the other defendants named in the caption of this bill, together with the said unknown heirs and devisees, be made and taken as defendants to this bill, and that they and each of them be compelled to answer on oath all and singular the allegations herein in the same manner and to the same extent as if each of and every of said allegations were here again repeated and they and each of them specially interrogated thereto; that each and all of the said pretended deeds and contracts and leases of the said defendants and under which they and each of them claim as aforesaid be set aside, recalled, and annulled as inoperative, fraudulent, null, and void as to these plaintiffs, and that the cloud thereby created on the said title of these plaintiffs in the lands in question be declared to be removed therefrom, and that the said plaintiffs, Mary E. Braxton, Harrietta C. Gorden, Malinda C. Patton, Lelia C. Stiles, E. J. Caperton,

330 Allen Caperton, Ella Caperton, be quieted and confirmed in their said title to the said tracts and parcels of land owned and possessed by them as aforesaid and hereinbefore mentioned and described; that a writ of *habere facias possessionem* be awarded them against the said defendants and each of them and against all other persons found on said lands or any part of them claiming under, by, or through the said defendants or either of them, and in order that these plaintiffs may have the full and undisturbed possession of every part and parcel of their said lands.

And these plaintiffs pray for such other, further, and general or special relief which the nature of their case may require and the court may see fit to grant; and they will ever pray, &c.

TAMLIN BRAXTON ET AL.,
Plaintiffs, by Counsel.

JAMES H. FERGUSON, *Sol.*

331 The exhibits referred to in the second amended and supplemental bill are in the words and figures following, to wit:

"EXHIBIT W. M. C."

Robert Brooke, Esquire, governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye, that by virtue of land office treasury warrants No. 1141 and 1142, issued the 4th day of February, 1795, there is granted by the said Commonwealth unto William McCreery, assignee of John Dawson, assignee of William McCreery, a certain tract or parcel of land containing 100,000 acres, by survey bearing date the 23rd day of April, 1795, lying and being in the county of Randolph, on Gauley river, adjoining lands of Henry Banks, John Holmes, George Gale and George Harness, and bounded as followeth, to wit: Beginning at a birch, a corner of said Holmes, Gale and Harness, which tree stands on a small rise about 40 poles from the mouth, on a large run that puts in Gauley river about 2¾ miles from the Fork lick; thence with their line S. 35 W. 5020 poles, crossing Gauley river four times to a poplar, S. 55 E. 4000 poles to a gum, N. 35 E. 7890 — to a large sugar tree, a corner of said Banks; thence with three of said Banks' lines S. 60 W. 3200 poles to a sugar tree; N. 69 W. 1700 poles to a sugar, said Banks' corner, and with a line of his, N. 24 W. 800 poles to a red oak, a corner of said Holmes, Gale and Harness, and with two of their lines S. 4 W. 224 poles to a red oak on Gauley bank, thence N. 60 W. 116 poles crossing the mouth of the aforesaid run to the beginning, which stands about S. 20 west, or near that course from the Fork lick. But it is always to be understood, that the survey upon which this grant is founded includes thirty-seven thousand and fifty-two acres, which having a preference by law to the warrants and rights upon which this grant is founded, liberty is reserved that the same shall be firm and
332 valid and may be carried into grant or grants, and this grant shall be no bar in either law or equity, to the confirmation of the title or titles to the same, as before mentioned and reserved, with its appurtenances, to have and to hold the said tract or parcel of land, with its appurtenances, to the said William McCreery (except as before excepted,) and his heirs, forever.

In witness whereof, the said Rob't Brooke, Esquire, governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the 21st day of January, in the year of our Lord, 1796, and of the Commonwealth the twentieth.

ROBERT BROOKE.

LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy from the records.
Witness my hand and seal of office this 8th day of Sept., 1883.

J. M. BROCKERHOFF,
[SEAL.] *Reg. Land Office.*

333-338 "EXHIBIT No. 44." "EXHIBIT No. 45."

List of Real Estate within the County of Webster Sold in the Month of September, on the 24th Day Thereof, Eighteen Hundred and Sixty-nine, for the Non-Payment of Taxes Thereon for the Years 1865, 1866, 1867, *&* 1868.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	In what township situated.	Local description of land.	Amount of taxes due thereon for State & school purposes, including interest, damages, & commissions, for the years—				Amount of county tax due thereon, including same for the years—				Amount of township tax due thereon, including same for the years—				Quantity of land sold.	Name of purchaser.	Amount of purchase-money paid, including int., damages, com., & fee for receipt.
					1865.	1866.	1867.	1868.	1865.	1866.	1867.	1868.	1865.	1866.	1867.	1868.			
Arnold, Jonathan, and John S. Hoffman.	1,517	.....	Fork Lick.	West side Sugar creek.	2 56	2 15	1 97	1 52	.....	.....	.....	.....	.....	.....	.....	.....	1,517	Thomas J. Arnold.	8 46
Adkinson, James A.	140	.....	Glade	Laurel creek	90	77	75	.....	Re	dee	med	6 Se	pt.,	1870.	.....	.....	140	Thomas G. Putnam, G. Huling.	2 64
Armstrong, Benj. F.	400	.....	Holly	Holly river	.....	.....	.....	1 73		"	"	"		"	.....	.....	400	J. L. Smith	1 97
Bryant, Allen C., and L. H. Moffit.	300	.....	Fork Lick.	Point mountain	91	79	75	54	.....	.....	.....	.....	.....	.....	.....	.....	300	Albert Owen	3 40
Banks, Henry	58,000	.....	Same	Elk and Gauley	.....	.....	.....	10 52	.....	.....	.....	.....	.....	.....	.....	.....	.....	Albert Owen, G. P. Shreve, B. Rich.	11 20
Beard, David's, heirs	680	.....	Glade	Near Lane's bottom	3 68	.....	3 40	2 62	.....	.....	.....	.....	.....	.....	.....	.....	680	Talmage F. Cherry.	10 76
Baker, M. Q	100	.....	Same	No. side Gauley	.....	.....	1 96	07	.....	.....	.....	.....	.....	.....	.....	.....	100	Albert Owen	2 38
Braxton County Petroleum & Mining Co.	5,000	.....	Holly	Elk river	.....	6 55	6 25	4 86	.....	.....	.....	.....	.....	.....	.....	.....	5,000	Talmage F. Cherry.	18 17
	1,014	.....	Same	Same	.....	1 31	1 28	97	.....	.....	.....	.....	.....	.....	.....	.....	1,014	Talmadge F. Cherry.	3 95
Same	1,014	.....	Same	Same	.....	1 31	1 28	97	.....	.....	.....	.....	.....	.....	.....	.....	1,014	Talmage F. Cherry.	3 95
Same	3,104	.....	Same	Same	.....	4 06	3 87	3 00	.....	.....	.....	.....	.....	.....	.....	.....	3,104	Talmage F. Cherry.	11 72
Byrne, B. W., & J. N. Camden.	500	.....	Same	Old Lick run	97	79	75	57	Redeemed Sept. 22nd, 1870.								300	W. James McCartney.	3 50
Same	486	.....	Same	Same	88	76	72	55	Redeemed Sept. 22nd, 1870.								300	Same	3 30
Camden, J. N., and B. W. Byrne.	1,000	.....	Fork Lick.	Grassy creek	5 40	3 73	5 00	2 71	Ditto								1,000	Henry Brockerhoof & Lewis G. Huling.	18 36
	1,000	.....	"	" "	3 19	2 62	2 50	1 94	Ditto								1,000	Same	10 91
Same	1,000	.....	"	South side of Elk	5 40	3 93	5 00	2 91	Ditto								1,000	Same	18 36
Same	500	.....	"	"	1 54	1 31	1 25	97	Ditto								500	Same	5 58
Same	500	.....	"	"	1 54	1 31	1 25	97	Ditto								500	Same	5 58
Same	500	.....	"	"	1 54	1 31	1 25	97	Ditto								500	Same	5 58

Exhibit No. 44, Exhibit No. 45—Continued.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	In what township situated.	Local description of land.	Amount of taxes due thereon for State & school purposes, including interest, damages, & commissions, for the years—				Amount of county tax due thereon, including same for the years—				Amount of township tax due thereon, including same for the years—				Quantity of land sold.	Name of purchaser.	Amount of purchase-money paid, including int., damages, com., & fee for receipt.
					1865.	1866.	1867.	1868.	1865.	1866.	1867.	1868.	1865.	1866.	1867.	1868.			
Same	2,000	.....	Fork Lick.	South side of Elk and Grassy creek.	5 64	3 93	5 00	2 88	Redeemed Sept. 22nd, 1870								2,000	Same	17 53
Same	3,893	.....	"	Same & Holly	9 01	7 62	9 71	6 99	Ditto								3,893	Albert Owen	35 25
Same	2,850	.....	"	Same	6 56	5 56	5 34	3 82	Ditto								2,850	Same	22 60
Caperton, Allen T	9,311	.....	"	Gauley & Wm. river	11 48	.....	11 66	7 08	Redeemed as per duplicate receipt, dated 24th May, 1870, filed.								9,311	Henry Brockerhoof & Lewis G. Huling.	31 91
Same	5,938	.....	"	Same	7 30	.....	7 62	4 68	.....								5,938	Same	20 64
Same	5,000	.....	"	Same	6 79	.....	6 25	3 96	.....								5,000	Wm. L. J. Corley & H. A. Holt.	18 10
Same	2,700	.....	"	Same	1 66	.....	3 36	1 04	"	"	"	"	"				2,700	Henry Brockerhoof & Lewis G. Huling.	6 62
Same	600	.....	"	Known as Gregg place.	.....	.....	75	56	"	"	"	"	"				600	Same	1 56
Same	400	.....	"	Between Gauley & Wm. rivers.	.....	.....	50	36	Redeemed 24th May, 1870, as per duplicate receipt filed.								400	Same	1 16
Camp, J. M., & R. Ervin.	2,000	.....	Glade	Laurel creek	5 67	3 73	3 75	2 88	.....								2,000	Talmage F. Cherry.	35 21
Conrad, Asa B.'s, heirs.	2,000	.....	Holly	Holly waters	.....	.....	5 00	.....	Redeemed 21st June, 1870, as per duplicate receipt filed.								2,000	Albert Owen	5 50
Camden, J., & B. W. Byrne.	3,893	.....	Holly	Grauss creek & Holly.	9 01	7 62	7 27	5 79	.....								3,000	Talmage F. Cherry.	31 21
Same	2,850	.....	"	Same	6 56	6 56	5 32	4 10	.....								900	Same	22 86
Coleman, S. & N	3,400	.....	"	Holly river	.....	.....	.....	2 67	Redeemed 19th Sept., '70								900	Same	3 04
Ewing, James	1,000	.....	Fork Lick.	Gauley river	.....	.....	.....	18	.....								1,000	Albert Owen	44
Edwards, Wm. H	500	.....	Glade	Amos' fork of Laurel creek.	10 83	1 31	1 25	97	Redeemed Sept. 22, 1870								500	P. B. Adams	13 15
Same	2,000	.....	"	Waters same	43 07	5 20	5 00	3 88	Ditto								2,000	Talmage F. Cherry.	60 29
Same	952	.....	"	Same	20 57	2 48	2 36	1 83	Ditto								952	Same	3 04
Same	1,029	.....	"	Amos' fork Laurel c'k.	22 10	2 68	2 56	1 99	Ditto								1,029	Same	31 00
Same	1,000	.....	"	Waters Laurel c'k	10 83	2 68	2 50	1 94	Ditto								700	Same	18 03
Same	500	.....	"	Same	21 63	1 31	1 25	97	Ditto								500	Same	26 66
Same	476	.....	Holly	Elk river	9 83	1 20	1 17	91	Ditto								476	W. L. J. Corley	13 00

| | | |

Exhibit No. 44, Exhibit No. 45—Continued.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	In what township situated.	Local description of land.	Amount of taxes due thereon for State & school purposes, including interest, damages, & commissions, for the years—				Amount of county tax due thereon, including same for the years—				Amount of township tax due thereon, including same for the years—				Quantity of land sold.	Name of purchaser.	Amount of purchase-money paid, including int., damages, com., & fee for receipt.
					1865.	1866.	1867.	1868.	1865	1866.	1867	1868.	1865.	1866.	1867.	1868.			
Moore, Henry C.	17,960	.....	Same..	Elk river	158 09	57 67	20 56	13 87	Re re of	dee dem circ	med ption uit e	22d n se out	d Se t asi Sept	pt., 1 de by ., 187	870. by or 1.	This der	6,000	Talmage F. Cherry.	233 12
Same	164	.....	" ..	Point mountain	2 93	43	80	.....	.....	.....	.....	.....	.....	.....	.....	.....	164	Same	5 25
Middleton, O. H.	1,000	.....	" ..	No. 43, Burgoo	.....	2 62	2 50	1 94	.....	.....	.....	.....	.....	.....	.....	.....	1,000	A. Owen, G. P. Shreve, B. Rich.	7 68
Same	1,000	.....	" ..	No. 49, same	.....	2 62	2 50	1 94	.....	.....	.....	.....	.....	.....	.....	.....	1,000	Same	7 68
Same	1,500	.....	" ..	No. 51, Gauley & Burgoo.	.....	1 96	1 86	1 45	.....	.....	.....	.....	.....	.....	.....	.....	1,500	Same	5 68
Same	1,000	.....	" ..	No. 39, Branch of Elk	.....	1 31	1 25	97	.....	.....	.....	.....	.....	.....	.....	.....	1,000	Same	3 96
Messingburg, George.	12,500	.....	" ..	.....	.....	.....	.....	2 24	.....	.....	.....	.....	.....	.....	.....	.....	12,500	Same	2 61
Middleton, O. H.	1,000	.....	Glade..	No. 24, Back Camp creek.	.....	53	50	39	.....	.....	.....	.....	.....	.....	.....	.....	1,000	Same	1 74
Same	1,000	.....	Same ..	No. 27, same	.....	53	50	39	.....	.....	.....	.....	.....	.....	.....	.....	1,000	Same	1 74
Same	1,000	.....	" ..	No. 30, same	.....	53	50	39	.....	.....	.....	.....	.....	.....	.....	.....	1,000	Same	1 74
Maury, R. H.	170	.....	" ..	Head Sugar creek	4 10	52	48	32	.....	.....	.....	.....	.....	.....	.....	.....	170	Albert Owen	5 94
Middleton, O. H.	1,000	.....	" ..	No. 42, Branch Gauley.	.....	53	50	39	.....	.....	.....	.....	.....	.....	.....	.....	1,000	A. Owen, G. P. Shreve, & B. Rich.	1 74
McClary, Wm.	100,000	.....	" ..	Gauley & Wm. river	.....	.....	.....	39 60	.....	.....	.....	.....	.....	.....	.....	.....	100,000	Albert Owen & B. Rich.	41 82
Michison, C.	1,692	.....	Holly..	Waters of Holly	.....	.....	8 64	6 08	Re	dee	med	22d	Sept., 187		0.	.....	1,692	James H. Huling	15 50
McCray, Robert	3,077	.....	" ..	Kanawha	.....	.....	.....	11 06	.....	.....	.....	.....	.....	.....	.....	.....	1,500	Same	11 86
Night, John	100	.....	Glade..	Birch river	1 22	1 05	1 00	76	.....	.....	.....	.....	.....	.....	.....	.....	100	W. L. J. Corley & J. W. Morrison, Jr.	16 14
Newlin & J. M. Camp's heirs.	1,000	.....	Holly..	Between Holly & Little Kanawha.	4 65	3 73	3 75	2 91	Re	dee	med	23 J	une,	1870	.....	.....	990	Talmage F. Cherry.	16 16
Parnell, Thos., h's	2,000	.....	Fork Lick.	No. 19, B'k f'k of Elk.	3 09	2 62	2 50	1 94	.....	.....	.....	.....	.....	.....	.....	.....	900	Same	10 91
Same	2,000	.....	Do.	No. 20, same	3 09	2 62	2 50	1 94	.....	.....	.....	.....	.....	.....	.....	.....	300	Same	10 91
Price, Henry's, h'rs.	250	.....	Holly..	A. A. Bret	3 03	37	35	36	.....	.....	.....	.....	.....	.....	.....	.....	250	Peter Hamrick	4 56
Paul, Thos., h'rs	2,000	.....	Same ..	No. 17, Sugar creek	3 09	2 62	2 50	1 94	.....	.....	.....	.....	.....	.....	.....	.....	700	Talmage F. Cherry.	10 90
Same	3,000	.....	" ..	No. 25, same	4 63	3 93	3 93	2 98	.....	.....	.....	.....	.....	.....	.....	.....	700	Same	16 23
Same	2,244½	.....	" ..	No. 27, same	3 47	2 94	2 80	2 17	Re	dee	med	24	Aug.,	187	2.	.....	550	Same	12 14

Same	3,000		"	No. 28, B. f'k, same	4 63	3 13	3 75	28									3,000	Same		13 46
Paul, Lewis	2,500		"	No. 10, Elk river	3 09	2 62	2 50	1 98									2,300	Same		10 95
Paterson, Robert	50,000		"	Waters Holly river				9 00									50,000	Albert Owen		9 70
Paterson, Joseph	187,000		"	Same				33 66									187,000	Same		35 59
Roger, Deming's, heirs.	150		Fork Lick.	Between Gauley & Elk.	1 22	79	75	57	Redeemed 24th Sept., 1870, 8 o'clock a. m.								150	T. G. Putnam		3 75
Rotter, Sam'l	1,000		"	Same	1 22	1 05	1 00	74									1,000	Talmage F. Cherry.		4 46
Ruckman, D. L	200		Glade	Gauley & Wm. river	60	53	50										200	Thomas G. Putnam.		1 96
Rayner, Jas. H	194		"	Laurel creek	1 60	20	19										100	Isaac B. Tyler		2 35
Ruse, Jno. M., & D. Love.	503		"	Upper Glade	9 30	7 88	7 52	5 84									100	P. B. Adams		32 31
Roger, James H	1,500		Holly	Elk river	4 63		3 74		Redeemed 18th Aug., 1870								1,500	Talmage F. Cherry.		9 03
Snyder, Henry & Wm.	1,000		Fork Lick.	Burgoo & Big run	3 09	2 60	2 50	1 94									1,000	Same		10 91
Sawyer, Isaac, Jr.'s, h'rs.	150		"	North side of Gauley.	1 57	1 50	1 15		Redeemed 23rd Sept., 1870								150	Wm. L. J. Corley & J. W. Morrison		6 60
See, Jacob	1,000		"	Back fork of Elk	1 56	1 31	1 25	97									300	John R. Gilliland.		5 57
Say, Joseph, & B. Curtis.	25,000		"	Gauley & Wm's river				4 50									25,000	Albert Owen		4 98
Same	25,000		"	Same				4 50									25,000	Same		4 98
Stockton, John	173		Glade	Gauley	2 66	2 26	2 15										173	Wm. L. J. Corley.		7 67
Stockton, Aaron	500		"	Part of Lane's bottom	7 86	6 67	6 38										500	Thomas G. Putnam.		21 34
Sanders, Wesley	883		Holly	Elk river	1 05	91	87	64									800	Talmage F. Cherry.		3 90
Same	450		"	"	55	82	45	33									450	Same		2 15
Southgate, Wright's h'rs.	2,000		"	Sugar creek	2 45	2 10	2 00	1 51									1,000	Same		8 71
Stephenson, Henry	1,692		"	Waters of Holly			8 45										1,692	Same		9 10
Topen, Arthur	2,130		Fork Lick.	Elk river	45 41	5 57	6 31	4 19									2,130	Albert Owen		63 61
Thomas, John C	10,000		"					1 80	Redeemed 23 Sept., 1870								1	W. W. McClanahan.		2 14
Thomas & Richards.	90,000		Glade					14 20									90,000	Talmage F. Cherry.		17 26
Vanzant, Theo	1,500		Fork Lick.	Leatherwood	1 83	1 57	1 50	1 12	Redeemed 22 Aug., 1870								500	Same		6 57
Vanzant, Wm. L	1,500		"	Same	1 83	1 57	1 50	1 12									450	Same		6 57
Vanzant, W. L	1,000		Fork Lick.	Leatherwood	3 09	2 62	2 50	1 94									300	James H. Huling.		10 90
Woods, Edward's, h'rs.	1,000		"	Sugar creek	1 54	1 31	1 25	97									300	John R. Boggess.		5 57
Welch, James	105,000		"					20 67									105,000	Albert Owen		21 97
Young, Wm. C	300		Glade	Laurel creek	1 83	1 57	1 50		Redeemed 6th Sept., '70								500	W. L. J. Corley & J. W. Morrison.		5 39
Young, Sarah	80		"	Same	48	42	40		"	"	"	"					80	Same. Same		1 62
Young, Martha	80		"	Same	48	42	40		"	"	"	"					80	Same. Same		1 62
Lough, Philip S	100			Waters of Holly		92											100	T. G. Putnam		1 22
Same	125			" " "		16											125	Same		42

Exhibit No. 44, Exhibit No. 45—Continued.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	In what township situated.	Local description of land.	Amount of taxes due thereon for State & school purposes, including interest, damages, & commissions, for the years—				Amount of county tax due thereon, including same for the years—				Amount of township tax due thereon, including same for the years—				Quantity of land sold.	Name of purchaser.	Amount of purchase-money paid, including int., damages, com., & fee for receipt.
					1865.	1866.	1867.	1868.	1865.	1866.	1867.	1868.	1865.	1866.	1867.	1868.			
Moore, Henry C.....	111	.....	Glade..	Gauley mountain.....	.....	10	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5	Same.....	35
Sholtzer, Heilbrunner.	500	.....	" ..	Stroud's glade.....	.....	65	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	200	Same.....	93
Walcott, ——	70,000	.....	" ..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70,000	T. F. Cherry.....	31 44
Ware, Edmund W...	150	.....	.....	Waters of Holly	3 70	.....	.....	.....	Redeemed March 3 1st, 1870.								150	Henry Brockerhoof & Lewis Huling.	4 17
Same.....	10½	.....	.....	" " "	5	.....	.....	.....		"		"		"	" ...	.....	10½	Same.....	30

I, Charles McDodrill, sheriff of the county of Webster, do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year for the non-payment of taxes thereon for the years 1865, 1866, 1867, & 1868, and that I am not directly or indirectly interested in the purchase of any of the said real estate, so help me God.

CHARLES McDODRILL, *Sheriff.*

The foregoing oath was subscribed and taken by the said Charles McDodrill, sheriff of Webster county, before me, a justice of the township of Glade, in the said county, in *in* my said township, on this 27th day of September, in the year 1869.

THOMAS M. REYNOLDS, *Justice.*

I, James Woodzell, recorder of the county of Webster, within twenty days after the foregoing list, with the certificate of the oath attached, was returned to me, have made the foregoing accurate copy thereof, and on this 20th day of October, 1869, transmitted the original to the auditor.

JAMES WOODZELL, *Recorder.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Charles W. Benedum, clerk of the county court of said county, do certify that the foregoing is a true and complete copy of the list of lands sold to individuals in the month of September, 1869, for the years 1865, 1866, 1867, & 1868 by the sheriff of said county for the non-payment of the taxes due thereon.

Given under my hand this 22nd day of April, 1885.

C. W. BENEDUM, *Clerk.*

C. W. BENEDUM, *Clerk.*

339 "EXHIBIT J," WITH 2ND AMENDED AND SUPPLEMENTAL BILL.

This deed made the 28th day of September, in the year 1870, between James Woodzell, recorder of the county of Webster, and State of West Virginia, of the first part, and Benjamin Rich and Thornton Conrow, assignee of Albert Owen, and G. P. Shreeve, of the State of Pennsylvania, of the second part, witnesseth: That whereas a tract of land of twelve thousand five hundred acres (12,500) of land in the county of Webster, was duly entered for taxation on the land books of the assessor of Webster county, for the year 1868, in the name of George Messingbird, or Messingburg, and charged with $2.63 *cents* taxes for the year aforesaid, who was in said books described as residing in New Jersey, and as having an estate in fee of, in and to said land. And said land was duly assessed with taxes and levies as aforesaid for the said year and the said books were examined and certified according to law, and now remain in the office designated by law in said county. That a copy of said assessor's books was delivered to the sheriff of Webster county as a guide in the collection of the taxes assessed therein for the payment of which a lien is declared by law to exist on the real estate so assessed. And the said sheriff after ascertaining which of the taxes so assessed in his county could not be collected, did, as soon as practicable thereafter, make out lists of said real estate which was delinquent for the non-payment of taxes thereon. That the list of lands so delinquent was presented to the board of supervisors of Webster county, and was examined by said board, the board being satisfied of the correctness of said list that all things required by law, or which were necessary or proper to be done in the premises had been done and performed by said sheriff, received said list and directed the clerk of said board to certify a copy thereof
340 to the auditor, and preserve the original list in his office, and whereas the said auditor caused to be delivered to the sheriff of Webster county lists of the real estate therein, which at the time said lists were made out were returned delinquent for the non-payment of the taxes for the year 1868, and previous years, and not previously sold therefor, and on which the taxes and interest, or any part thereof, remained unpaid, and were not released or otherwise discharged, which said lists were made and certified in all respects according to law. And whereas the said sheriff, upon the receipt of the said lists, proceeded to give notice in the mode prescribed by law that he would proceed to sell the lands therein mentioned by public auction between the hours of ten in the morning and four in the afternoon, on the 24th day of September, in the year 1869, at the door of the court-house of Webster county unless the said taxes, interest, damages and commission should be sooner paid to said sheriff or into the treasury of the State. And whereas the said taxes remaining unpaid, the sheriff did, on the 24th day of September, in the year 1869, sell, in pursuance of said notice, in the mode prescribed by law, a

tract of twelve thousand five hundred acres of land mentioned in said list, at which sale the said Albert Owen, G. P. Shreeve and B. Rich, who assigned an undivided interest to Thornton Conrow, became the purchasers of the whole of the said tract at $2.61 *cents*: that being the amount of taxes, interest and other charges thereon certified as aforesaid, as appears from an accurate copy of a list of said sales together with a certificate of the oath attached, was on record in the office of the recorder of Webster county. And whereas one year from the time of said sale having transpired, and the said tract not having been redeemed, and the said Albert Owen, G. P. Shreeve and Benjamin Rich, the said purchasers having at their — caused a report to be made by B. Mollhan, the
341 surveyor of lands for the county of Webster, in which the land is situated, specifying the metes and bounds of the lands sold and giving such description as will identify the same, which report bears date the 28th day of September, 1870, and the party of the first part, as recorder, seeing no objection to the report, has ordered the same to be recorded in his office, and record thereof made accordingly, and is here referred to as part hereof. And whereas, the said surveyor's report described the said land as being and lying on the waters of Gauley river, at the mouth of Turtle or Turkey creek, in the county of Webster, and is bounded as follows, to wit: Beginning at sugar tree, thence north 108 poles to a beech, N. 58° W. 1120 poles to a stake standing on the bank of Gauley river, thence N. 185 poles to a beech, S. 67 W. 794 poles to a cucumber, near the mouth of said Turtle or Turkey creek, thence S. 8 W. 710 poles to a sugar, S. 26 E. 810 poles to a locust, corner to James Welch's 105,000-acre tract, N. 64 E. 1945 poles to the beginning; it being the same land that was surveyed for George Messingbird on the 10th day of May, 1795, then in the county of Randolph, Virginia, now in the county of Webster, West Virginia, lying on the waters of Gauley river, at the mouth of Turtle or Turkey creek, and adjoining the lands of James Welch and others, containing twelve thousand five hundred acres, as appeared by the report of the surveyor of lands for Webster county, *and the said.* And said Albert Owen, G. P. Shreeve and Benjamin Rich became the purchasers of said tract of 12,500 acres in — who assigned their right to said purchase by various assignments duly acknowledged to Benjamin Rich and Thornton Conrow, as shown by the purchase certificate attached to the surveyor's report, and now having recited all the material circumstances appearing in the recorder's office of Webster county relating to said land and to said sale, and the said Benjamin
342 Rich and Thornton Conrow, assignees as aforesaid, being now entitled to a conveyance, this deed therefore, witnesseth: That for and in consideration of the premises, and also of the sum of three dollars in hand paid, the said James Woodzell, recorder as aforesaid, hath, and doth grant and convey unto the said Benjamin Rich and Thornton Conrow, assignees as aforesaid, their heirs and assigns forever, all the said land described in the said surveyor's report herein referred to, to have and to hold to the said Benjamin Rich

and Thornton Conrow as aforesaid, and to their heirs and assigns forever.

Witness the following signature and seal.

JAMES WOODZELL, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Thomas M. Reynolds, a justice of the county aforesaid and township of Glade, do certify that James Woodzell, recorder of Webster county, whose name is signed to the annexed writing, bearing date on the 8th day of September, 1870, has this day acknowledged the same before me in my township.

THOMAS M. REYNOLDS, *Justice.*

STATE OF WEST VIRGINIA, *Webster County.* }

RECORDER'S OFFICE, *Sept 28th*, 1870.

This deed, with the certificate of acknowledgment to it annexed, was this day presented for record, and it, being duly certified therefore, is thereupon admitted, as was also the sheriff's memorandum of sale, with the assignments endorsed thereon, the recorder's receipt for county taxes, and surveyor's report and plat.

JAMES WOODZELL, *Recorder.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

343 I, C. W. Benedum, clerk of the county court of said county, do hereby certify that the foregoing is a true copy from the record in my office.

Given under my hand this 23rd day of April, 1885.

C. W. BENEDUM, *Clerk.*

EXHIBIT "K," WITH SECOND AMENDED & SUPPLEMENTAL BILL.

Benjamin Rich and Wife and Thornton Conrow and Wife
to
Ferdinand F. Sharp.

This indenture made the third day of May in the year of our Lord one thousand eight hundred and seventy-two, between Benjamin Rich and Martha Jane, his wife, of Centre county, State of Pennsylvania, and Thornton Conrow, and Sarah Ann, his wife, of the city of Philadelphia, State aforesaid, of the first part and Ferdinand F. Sharp, of the city *of the city* of Philadelphia, of the other part, witnesseth: That the said party of the first part for and in consideration of the sum of seventeen thousand five hundred dollars lawful money of the United States of America unto them, well and truly paid, by the said party of the second part, at and before the sealing and delivery of these, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released and con-

firmed, and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said party of the second part, his heirs and assigns, the one undivided third part or moiety of all their interest, right, title and claim of, in and to the following
344 three tracts of land, in the county of Webster, State of West Virginia, described as follows; First: Beginning at a birch standing on a small rise 40 poles from the mouth of a run that puts into Gauley river; south 30 west 1030 poles from Fork lick; running thence S. 35 W. 5020 poles, crossing Gauley river five times to a poplar; thence S. 55 E. 4000 to a gum; thence N. 35 E. 7890 poles to a sugar, corner to said Banks; thence with three of said Banks' lines S. 66 W. 1700 poles to a sugar; thence N. 24 W. 800 poles to a red oak, a corner to Holmes, Gale & Harness land, and with two of their lines S. 4 W. 224 poles to a red-oak stump on the bank of Gauley, N. 60 W. 100 poles, crossing at the mouth of a large run at 40 poles from the beginning, to the beginning, containing one hundred thousand acres, as appears by the report of the surveyor of lands for Webster county, and the said tract of one hundred thousand acres being the same tract of land that was surveyed for William McClary on the 23rd day of April, 1795, in the county of Randolph, Virginia (now Webster county, West Virginia), and adjoins the lands of Holmes, Gale & Harness and Banks. Second: Beginning at a locust tree, a corner to lands of George Messingbird, running thence S. 57 E. 4020 poles to a white oak; thence N. 48 E. 1235 poles to Drenning's house; thence N. 18 E. 2170 poles to a sugar standing on the top of the Alleghany mountain; thence N. 61 E. 1600 poles to a pine tree; thence N. 53 W. 5600 poles to a white oak; thence S. 23 W. 5100 poles to the beginning; it being the same tract of land that was surveyed for James Welch on the first day of June, in the year A. D., 1795, then in Randolph county, Virginia (now Webster county, West Virginia,) and adjoining the lands of George Messingbird, containing one hundred and five thousand (150,000) acres, as appeared by the report of the surveyor of lands for Webster county; and the said tract of 105,000 acres as aforesaid was purchased on the 24th day of September, 1869, the said Albert Owen assigned his entire interest in said purchase to Benjamin Rich, and on the
345 28th day of September, 1870, the said Benjamin Rich assigned and conveyed one undivided half of same to Thornton Conrow. Third: Beginning at a sugar tree, thence N. 108 poles to a beech, N. 58 W. 1120 poles to a stake standing on the bank of Gauley river; thence west 185 poles to a beech, S. 67 W. 790 poles to a cucumber near the mouth of said Turtle or Turkey creek; thence S. 8 W. 710 poles to a sugar, S. 26 E. 810 poles to a locust, corner to James Welch's 105,000-acre tract; thence N. 64 E. 1945 poles to the beginning; it being the same land that was surveyed for George Messingbird on the 10th day of May, 1795, then in the county of Randolph, Virginia, (now Webster county, West Virginia,) lying on the waters of Gauley river at the mouth of Turtle or Turkey creek, and adjoins the lands of James Welch and others, containing twelve thousand five hundred acres, as appeared by the report of the surveyor of lands for Webster county, and the said Albert Owen, G. P. Shreve and B.

Rich, the purchasers of the said tract of land 12,500 acres entire, who assigned their right to said purchase by various assignments duly acknowledged, to Benjamin Rich and Thornton Conrow, as shown by the purchasers' certificate attached to the said surveyor's report, the deeds to the party of the first part for the above-described three tracts of land being duly recorded in the recorder's office, in Webster county, State of West Virginia, in Deed Book No 1, page 385, to 397, as will more fully and at large appear, together with all and singular the ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part in law, equity or otherwise, howsoever of, in and to the same, and every part thereof.

346 To have and to hold the said moiety or undivided third of the three tracts of land above described, hereditaments and premises hereby granted or mentioned and intended so to be with the appurtenances, unto the said party of the second part, his heirs and assigns against them, the said party of the first part, their heirs, executors, and against all and every other person or persons whomsoever lawfully, *lawfully* claiming, or to claim the same, or any part thereof from, by, under them or either of them, shall and will warrant and forever defend

In witness whereof the said parties to these presents have hereunto interchang-ably set their hands and seals. Dated the day and year first above written.

BENJAMIN RICH, [L. S.]
MARTHA JANE RICH, [L. S.]
THORNTON CONROW, [L. S.]
SARAH A. CONROW. [L. S.]

Signed, sealed and delivered in presence of

T. J. GEARY,
CHARLES GUEST,
SAM'L B. HENRY.

[$17.50 U. S. int. rev. stamp.]

CENTRE COUNTY, PA.:

On the third day of May, anno Domini 1872, before me, a justice of the peace in and for the county aforesaid, personally appeared the above-named Benjamin Rich and Martha Jane, his wife, and in due form of law acknowledged the above indenture to be their act and each of their act and deed and desired the same to be recorded as such; and the said Martha Jane, being of full age and separate and apart from her said husband by me thereon privily examined and the full contents of the above deed being by me first made known to her, did thereupon declare and say that she did voluntarily and of her own free will and accord sign, seal, and as her

act and deed delivered the above indenture, deed, or conveyance without any coercion or compulsion of her said husband.

Witness my hand and seal the day and year aforesaid.

T. J. GEARY, *J. P.*

347 STATE OF PENNSYLVANIA, *County of Centre,* } ss:

Prothonotary's Seal of Centre Co.

I, John Moran, prothonotary of the court of common pleas in and for said county of Centre, do hereby certify that Thomas J. Geary, Esqr., before whom the within deed was acknowledged, was at the time of so doing an acting justice of the peace in and for said county, duly commissioned and qualified and authorized by the laws of the Commonwealth to take such acknowledgment; that his signature appended thereto in attestation is — the proper handwriting of said justice.

Witness my hand and the seal of said court this 4th day of May, A. D. 1872.

JOHN MORAN,
Prothonotary.

STATE OF PENNSYLVANIA, *City and County of Philadelphia,* } ss:

Be it remembered that on this tenth day of May, A. D. 1872, before me, the subscriber, a commissioner for the State of West Virginia, duly commissioned and qualified, personally appeared Thornton Conrow and Sarah A. Conrow, his wife, to me known as two of the parties who executed the within indenture, and acknowledged that they had signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed; and the said Sarah A. Conrow, wife of the said Thornton Conrow, on a separate examination by me apart from her said husband, and the contents of this indenture first having been fully made known to her, acknowledged that she had executed the same freely and without any fear or compulsion of her said husband.

Witness my hand and official seal the day and year aforesaid.

[COMMISSIONER'S SEAL.] SAM'L B. HENY,
Com. for West Virginia in Pennsylvania.

348 Received the day and date of the above indenture, of the above-named Ferdinand F. Sharp, seventeen thousand five hundred dollars, the consideration money in full.

BENJAMIN RICH.
THORNTON CONROW.

STATE OF WEST VIRGINIA, *County of Webster.* }

RECORDER'S OFFICE, *June 6th*, 1872.

This deed, with the certificate of acknowledgment to it annexed, was this day presented in this office for record, and it, being duly certified therefore, is therefore admitted.

JAMES WOODZELL,
Recorder, W. C.

STATE OF WEST VIRGINIA, } *To wit:*
Webster County, }

I, C. W. Benedum, clerk of the county court of said county, do hereby certify that the foregoing writing is a true copy from the records in my office.

Given under my hand this 29th day of April, 1885.

C. W. BENEDUM,
Clerk of the Co. C't of Webster Co.

349 EXHIBIT "L L," WITH AMENDED AND SUPPLEMENTAL BILL.

This deed made the 28th day of Sept. in the year 1870 between James Woodzell, recorder of the county of Webster, and State of West Virginia, of the first part, and Benjamin Rich and Thornton Conrow, assignees of *of* Albert Owen, of the county of Centre, and State of Pennsylvania, of the second part, witnesseth: That whereas a tract of one hundred and five thousand (105,000) acres of land in the county of Webster was duly entered for taxation on the land books of the assessor of Webster county for the year 1868, in the name of James Welch, and charged with $21.72 *cents* taxes for the year aforesaid, who was in said books described as residing in Pennsylvania, and as having an estate in fee of, in and to said land, and said land was duly assessed with taxes and levies as aforesaid for the said year, and the said books were examined and certified according to law, and now remain in the office designated by law, in said county; that a copy of said assessor's books was delivered to the sheriff of Webster county as a guide in the collection of the taxes assessed therein for the payment of which taxes a lien is declared by law to exist on the real estate so assessed; and the said sheriff after ascertaining which of the taxes so assessed in his county could not be collected, did, as soon as practicable thereafter, make out a list of real estate which was delinquent for the non-payment of taxes thereon; that the list of lands so delinquent was presented to the board of supervisors of Webster county, and were examined by said board; the said board being satisfied of the correctness of said list, that all things required by law, or which were necessary or proper to be done in the premises, had been done and performed by said sheriff, received said list and directed the clerk of said board to certify a copy thereof to the auditor and
350 preserve the original list in his office; and whereas, the said auditor caused to be delivered to the sheriff of Webster county list of the real estate therein which at the time said lists were made out were returned *were returned* delinquent for the non-payment of the taxes for 1868 and previous years, and not previously sold therefor, and on which the taxes and interest, or any part thereof, remained unpaid, and were not released or otherwise discharged, which said lists are made and certified according to law; and whereas, the said sheriff, upon the receipt of said lists proceeded to give notice in the mode prescribed by law, that he would proceed to sell the lands therein mentioned by public auction between the hours of ten in

the morning and four in the afternoon on the 24th day of September, in the year 1869, at the door of the court-house of Webster county, unless the said taxes, interest, damages and commissions should be sooner paid to said sheriff, or into the treasury of the State; and whereas, the said taxes remaining unpaid, the sheriff did, on the 24th day of September, in the year 1869, at the court-house door of Webster county, that being the first day of the circuit court held in said month of Sept. in the year 1869, sell, in pursuance of said notice, in the mode prescribed by law, a tract of one hundred and five thousand acres of land, mentioned in said list and described as lying on Gauley and Williams rivers as aforesaid, at which said sale the said Albert Owen became the purchaser of the whole of said tract at $21.97 *cents*, that being the amount of taxes, interest and other charges thereon certified as aforesaid, as appears from an accurate copy of a list of said sales, together with a certificate of the oath attached, now on record in the office of the recorder of Webster county; and whereas, one year from the time of said sale having transpired, and the said tract of land not having been redeemed, and the said Albert Owen, the said purchaser,
351 having, at his expense, caused a report to be made by B. Mollohan, the surveyor of lands for the county of Webster in which the land is situated, specifying the metes and bounds of the land sold, and giving such description as will identify the same, which report bears date the twenty-eighth day of September, 1870; and the party of the first part, as recorder, seeing no objection to the report, has ordered the same to be recorded in his office, and a record made thereof accordingly, and is hereby referred to as a part hereof; and whereas the said surveyer's report described the said lands as being and lying on Gauly and Williams river in the county of Webster, and is bounded as follows, to wit: Beginning at a locust tree, a corner to lands of George Messingbird, running thence S. 57 E. 4,220 poles to a white oak, thence N. 48 E. 1,235 poles to Drenning's house, thence N. 18 E. 2,170 poles to a sugar standing on the top of the Alleghany mountain, thence N. 61 E. 1,600 poles to a pine tree, thence N. 53 W. 5,600 poles to a white oak, S. 23 W. 5,100 poles to the beginning; it being the same tract of land that was surveyed for James Welch on the first day of June in the year A. D., 1795, then in Randolph county, Virginia (now Webster county, West Virginia), and adjoins the lands of George Messingbird and others, containing one hundred and five thousand acres (105,000) *acres* as appeared by the report of the surveyor of lands for Webster county, and the said tract of 105,000 acres as aforesaid was purchased on the 24th day of September, 1869, the said Albert Owen assigned his interest in said purchase to Benjamin Rich, and on the 28th day of Sept., 1870, the said Benjamin Rich, assigned and conveyed one undivided half of same to Thornton Conrow. And now having recited all the material circumstances appearing in the recorder's office of Webster county relating to said land, and to the said sale, and the said Benjamin Rich and Thornton Conrow, as aforesaid, being now entitled to a conveyance, this deed,
352 therefore, witnesseth: That for and in consideration of the

premises and also the sum of three dollars, in hand paid, the said James Woodzell, recorder as aforesaid, hath and doth grant and convey unto the said Benjamin Rich and Thornton Conrow, and their heirs and assigns, forever, all the said lands described in the said surveyor's report herein referred to. To have and to hold the said land to the said Benjamin Rich and Thornton Conrow, and their heirs and assigns forever.

Witness the following signature and seal.

JAMES WOODZELL, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Thomas M. Reynolds, a justice of the county aforesaid and township of Glade, do hereby certify that James Woodzell, recorder of Webster county, whose name is signed to the annexed writing bearing date on the 28th day of September, 1870, has this day acknowledged the same before me in my township.

THOMAS M. REYNOLDS, *Justice.*

STATE OF WEST VIRGINIA, *Webster County.* }

RECORDER'S OFFICE, *Sept. 28th,* 1870.

This deed, with the certificate of acknowledgement to it annexed, was this day presented for record, and it, being duly certified, therefore is thereupon admitted, as was also the sheriff's memorandum of sale, the assignments thereon, the recorder's rec. for taxes, and surveyor's report and plat.

JAMES WOODZELL. *Recorder.*

353 EXHIBIT "L," WITH 2ND AMENDED AND SUPPLEMENTAL BILL.

James Woodzell, Recorder, &c. to Benjamin Rich and Thornton Conrow. } Deed for 100,000 Acres of Land Sold in the Name of Viscount Clifford De Flury.

This deed made the third day of October in the year 1872, between James Woodzell, recorder of the county of Webster, and State of West Virginia, of the first part, and Benjamin Rich and Thornton Conrow, of the county of Center, and Philadelphia, and State of Pennsylvania, of the second part, witnesseth: That whereas, a tract of one hundred thousand acres of land described in the assessor's land books as lying and being on Gauley, Williams, Cherry and Cranberry rivers, in the county of Webster, was duly entered for taxation on the land books of the assessor of Webster county, for the year 1870, in the name of Viscount Clifford De Flury, and charged three hundred and twenty-nine dollars and eighty cents taxes for the year aforesaid, who was in said books described as having an estate in fee of, in and to said land. And said land was duly assessed with taxes and levies as aforesaid for the said

year, and the said books were examined and certified according to law and now remain in the office designated by law in said county. That a copy of said assessor's books was delivered to the sheriff of Webster county as a guide in the collection of taxes assessed therein for the payment of which taxes a lien is declared by law to exist on the real estate so assessed, and the said sheriff after ascertaining which of the taxes so assessed in his county could not be collected, did as soon as practicable thereafter, make out lists of real estate which was delinquent for the non-payment of taxes thereon; that the list of lands so delinquent was presented to the board of supervisors of Webster county and was
354 examined by said board; the said board being satisfied of the correctness of said list that all things required by law, or which were necessary or proper to be done in the premises had been performed by said sheriff, who received said list and directed the clerk of the said board to certify a copy thereof to the auditor and preserve the original lists in his office; and whereas, the said auditor caused to be delivered to the sheriff of Webster county lists of the real estate therein, which at the time the said lists were made out were returned delinquent for the non-payment of the taxes for 1870 and previous years, and not previously sold therefor, and on which the taxes and interest, or any part thereof, remained unpaid and were not released or otherwise discharged, which said lists are made and certified in all respects according to law; and whereas, the said sheriff upon the receipt of said lists, proceeded to give notice in the mode prescribed by law, that he would proceed to sell the lands therein mentioned, by public auction, between the hours of ten in the morning and four in the afternoon on the first day of the next term of the circuit court of Webster county, in the year 1871, at the door of the court-house of Webster county, unless the taxes, interest, damages and commissions should be sooner paid to said sheriff, or into the treasury of the State; and whereas, the said taxes remaining unpaid, the sheriff did, on the 26th day of September, in the year 1871, sell, in pursuance of said notice in the mode prescribed by law, a tract of one hundred thousand acres of land mentioned in said list and described as lying on Gauley, Williams, Cherry and Cranberry rivers as aforesaid, at which said sale the said Benjamin Rich and Thornton Conrow became the purchasers of the whole of said tract at three hundred and thirty-nine dollars and eighty cents, that being the amount of interest, taxes and other charges thereon certified as aforesaid, as appears from an accurate copy of a list of said sales, together
355 with a certificate of the oath attached, now on record in the office of the recorder of Webster county; and whereas, one year from the time of said sale having transpired, and the said tract of land not having been redeemed, and the said Benjamin Rich and Thornton Conrow, purchasers, having, at their expense, caused a report to be made by Bernard Mollohan, the surveyor of lands for the county of Webster, in which the land is situated, specifying the metes and bounds of the land sold, and giving such description as will identify the same, which report bears date the second day of

October, 1872; and the party of the first part, as recorder, seeing no objection to the report, has ordered the same to be recorded in the office and a record thereof made accordingly, and is here referred to as part hereof; and whereas, the said surveyor's report described the said land as lying on Gauley, Williams, Cherry and Cranberry rivers, in the county of Webster, and is bounded as follows; to wit: Beginning at a birch, corner of lands of Holmes, Gale and Harness, which said tree stands on a small rise about 4 poles from the mouth of a small run that puts into Gauley river about 1030 poles from a hickory, corner at Fork lick, running thence with said Holmes, Gale and Harness' line S. 35 W. 5020 poles, crossing said river 5 times, to a poplar, thence S. 55 E. 4000 poles to a gum and white oak; thence N. 35 E. 7890 poles to a sugar, corner to Henry Banks' survey, thence with three of said Banks' lines S. 66 W. 3200 poles to a sugar, N. 39 W. 1700 poles to a sugar N. 24 W. 800 poles to a red oak, corner to said Holmes, Gale and Harness; thence with 2 of their lines S. 4 W. 224 poles to a red oak, standing on the bank of Gauley river about 3 poles above the Widow Sawyer's fence, chestnut pointers there; thence N. 60 W. 116 poles, crossing the mouth of the aforesaid run, to the place of beginning; containing one hundred thousand acres after the reduction of thirty-seven thousand and fifty-two acres, for prior claims, *containing 100,000 acres after the reduction of 37052*
356 *of prior claims*, as appeared by the report of the surveyor of lands for Webster county, and the said tract of land was surveyed for Col. William McClary on the 23rd day of April, 1795, the same having since been conveyed as appears by sundry deeds and conveyances now upon record in said county of Webster, showing that the same land was held in fee simple by Viscount Clifford de Fleury, but was sold on the 24th day of September, 1869, in the name of William McClary, for the non-payment of taxes thereon for the year of 1868, and previous years, and was purchased by Benjamin Rich, and the same conveyed to said Rich and Thornton Conrow by deed bearing date September 28th, 1870. The said tract of land was surveyed on the 23rd day of April, 1795, by Edward Jackson, surveyor of Randolph county, Virginia, and of record in said county, in Surveyor's Book No. 1, page 147, but now is in the new county of Webster, West Virginia; and now having recited all the material circumstances appearing in the recorder's office of Webster county relating to such land and to said sale, and the said Benjamin Rich and Thornton Conrow being now entitled to a conveyance, this deed therefore witnesseth: That for and in consideration of the premises and also of the sum of three dollars in hand paid, the said James Woodzell, recorder as aforesaid, hath and doth grant and convey unto the said Benjamin Rich and Thornton Conrow, their heirs and assigns forever, all the said land described in said surveyor's report, herein referred to, to have and to hold the said land to the said Benjamin Rich and Thornton Conrow, their heirs and assigns forever.

Witness the following signature and seal.

JAMES WOODZELL, *Recorder.* [SEAL.]

STATE OF WEST VIRGINIA, *Webster County*, } *To wit:*

I, P. F. Duffy, a justice of the county aforesaid and township of Fork Lick, do hereby certify that James Woodzell recorder of
357 Webster county and State of West Virginia, whose name is signed to the annexed writing, bearing date on the 3rd day of October, 1872, has this day acknowledged the same before me in my said county.

P. F. DUFFY, *Justice.*

STATE OF WEST VIRGINIA, *Webster County.* }

RECORDER'S OFFICE, *October* 3, 1872.

This deed, with the certificate of acknowledgment to it annexed, was this day presented in this office for record, and it, being duly certified, therefore is thereupon admitted.

J. WOODZELL, *Recorder.*

STATE OF WEST VIRGINIA, *Webster County*, } *To wit:*

I, C. W. Benedum, clerk of the county court of said county, do hereby certify that the foregoing writing is a true copy from the record in my office.

Given under my hand this 29th day of April, 1885.

C. W. BENEDUM,
Clerk of the Co. C't of Webster Co.

EXHIBIT "—," WITH AMENDED AND SUPPLEMENTAL BILL.

This deed, made the 28th day of September, in the year 1870, between James Woodzell recorder of Webster county, and State of West Virginia, of the first part, and Benjamin Rich, in part assignee of Albert Owen and G. P. Shreeve, of the county of Centre, and State of Pennsylvania, of the second part, witnesseth: That whereas a tract of fifty-eight thousand five hundred (58,500) acres of land described in the assessor's land book as lying and being on Elk and Gauley rivers, in the county of Webster, was duly entered for taxation on the
358 land books of the assessor of Webster county for the year 1868, in the name of Henry Banks, and charged with $10.95 *cents* taxes for the year aforesaid, who was in said books described as having an estate in fee of, in and to said land, and said land was duly assessed with taxes and levies as aforesaid for said year, and the said books were examined and certified according to law, and now remain in the office designated by law in said county; that a copy of said assessor's book was delivered to the sheriff of Webster county as a guide in the collection of taxes assessed therein, for the payment of which a lien is declared by law to exist on the real estate so assessed. And the said sheriff after ascertaining which of the taxes so assessed in his county could not be collected, did, as soon as prac-

ticable thereafter make out a list of real estate which was delinquent for the non-payment of taxes thereon; that the list of lands so delinquent was presented to the board of supervisors of Webster county and was examined by said board; the said board being satisfied of the correctness of said list that all things required by law, or which were necessary or proper to be done, had been and performed by said sheriff, received said list and directed the clerk of said board to certify a copy thereof to the auditor and preserve the original list in his office; and whereas, the said auditor caused to be delivered to the sheriff of Webster county lists of the real estate therein, which at the time said lists were made out were returned delinquent for the non-payment of the taxes for the year 1868, and previous years, and not previously sold therefor, and on which the taxes and interest, or any part thereof, remained unpaid and were not released or otherwise discharged, and which said lists were made out and certified in all respects according to law; and whereas, the said sheriff, upon the receipt of said lists proceeded to give notice in the mode prescribed by law that he would proceed to sell the lands therein mentioned by public auction between the hours
359 of ten in the morning and four in the afternoon on the 24th day of September, in the year 1869, at the door of the court-house of Webster county, unless the said taxes, interest, damages and commissions, should be sooner paid to the said sheriff or into the treasury of the State; and whereas the said taxes remaining unpaid the sheriff did, on the 29th day of September in the year 1869, at the court-house door of said Webster county, that being the first day of the circuit court held in said month of September, in the year 1869, sell, in pursuance of said notice, in the mode prescribed by law, a tract of fifty-eight thousand 500 (58,500) acres of land mentioned in said list and described as lying on Elk and Gauley rivers as aforesaid, at which said sale the said Benjamin Rich, Albert Owen and G. P. Shreeve became the purchasers of the whole of said tract at $11.20 *cts*, that being the amount of taxes, interest and other charged thereon certified as aforesaid, as appears from an accurate copy of said list of sales together with the certificate of the oath attached now on record in the office of the recorder of Webster county, and whereas, one year from the time of the said sale having transpired, and the said tract of land not having been redeemed, and the said Benjamin Rich, Albert Owen and G. P. Shreeve, the purchasers, having at their expense, caused a report to be made by B. Mollohan, the surveyor of lands for the county of Webster, in which the land is situated, specifying the metes and bounds of the lands sold, and giving such description thereof as will identify the same, which report bears date the 28th Sept. 1870; and the party of the first part, as recorder, seeing no objection to the report, has ordered the same to be recorded in his office and a record thereof made accordingly, and is here referred to as a part hereof; and whereas, the said surveyor's report describes the said land as lying on Elk, Holly and Gauley rivers, in the county of Webster, and is bounded as follows, to

wit: Beginning at a red oak on the north side of Gauley
360 river, running thence S. 24 E. 480 poles to Gauley river, crossing the same, same course 320 poles to a red oak between Gauley and Williams river-, distance on this line 800 poles, thence S. 69 E. 1700 poles to a black oak, thence N. 66 E. 3600 poles to a sugar, N. 2 E. 993 poles to a stake, thence N. 24 W. 800 poles to a poplar, thence N. 24 W. 400 poles to a poplar, thence S. 66 W. 400 poles to a poplar, thence S. 24 W. 400 poles to a sugar, thence S. 66 W. 4800 poles, crossing Elk river, to the beginning. The said tract of 58,500 acres aforesaid was surveyed for Henry Banks in 1787, which said tract was divided into lots or surveys, then in Randolph county, Va., (now in Webster county, West Virginia,) and adjoins the lands of William McClary and others, containing fifty-eight thousand five hundred (58,500) acres, as appeared by the report of the surveyor of lands for Webster county, and the said tract of 58,500 acres as aforesaid, was purchased by the said B. Rich, A. Owen and G. P. Shreeve, and the said Owen assigned his $\frac{1}{3}$ interest therein to the said G. P. Shreeve, and the said Shreeve conveys his entire interest, being $\frac{2}{3}$ to the said Benjamin Rich, as will appear by the sheriff's receipt, attached to the surveyor's report of said sale, &c.; now having recited all the material circumstances appearing in the recorder's office of Webster county relating to said land and to said sale, and the said Benjamin Rich, assignee as aforesaid being now entitled to a conveyance, this deed therefore, witnesseth: That for and in consideration of the premises, and also of the sum of three dollars in hand paid, the said James Woodzell, recorder as aforesaid, hath and doth grant and convey unto the said Benjamin Rich, and to his heirs and assigns, forever, all the said land described in said surveyor's report herein reported, to have and to hold the said land to the said Benjamin Rich and to his heirs and assigns forever.

Witness the following signature and seal.

JAMES WOODZELL, *Recorder.* [SEAL.]

361 STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Thos. M. Reynolds, a justice of the county aforesaid and township of Glade, do certify that James Woodzell, recorder of Webster county, whose name is signed to the annexed writing bearing date on the 28th day of Sept., 1870, has this day acknowledged the same before me in my said township.

THOMAS M. REYNOLDS, *Justice.*

STATE OF WEST VIRGINIA:

WEBSTER COUNTY RECORDER'S OFFICE, *Sept. 28th,* 1870.

This deed, with the certificate of acknowledgment to it annexed, was this day presented for record, and it, being duly certified, therefore is thereupon admitted, as well as the sheriff's memorandum, with the assignments thereon, the recorder's receipt for county taxes, and surveyor's plat and report.

JAMES WOODZELL, *Recorder.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, C. W. Benedum, clerk of the county court of said county, do hereby certify that the foregoing writing is a true copy from the record in my office.

Given under my hand this 29th day of April, 1885.

C. W. BENEDUM,
Clerk of the Co. C't of Webster County.

362 EXHIBIT "—," WITH 2ND AMENDED AND SUPPLEMENTAL BILL.

B. C. Conrad, Clerk, &c., to Stewart Wood. } Deed.

This deed made this 12th day of May, 1881, by B. C. Conrad, clerk of the circuit court of the county of Webster, in the State of West Virginia, and also a commissioner for the purpose, appointed by said circuit court of said county of Webster, by an order made and entered upon the records of the said court on the 7th day of April, 1881, of the first part, and Stewart Wood of the second part: whereas, in pursuance of the statute in such case made and provided, Patrick F. Duffy, sheriff of the said county did, on the 25th day of November, 1879, that being the first day of a term of the county court of said county, in that year commence to expose to public sale at the front door of the court-house of the said county, between the hours of ten in the morning and four in the afternoon, the real estate heretofore returned delinquent for the non-payment of the taxes due thereon in the said county of Webster; and whereas, at the said sale so made as aforesaid, on the said 25th day of November, 1879, B. P. Conrad, John A. J. Miller and Charles P. Dorr, in the name of "Conrad, Miller and Dorr," who have duly assigned the benefit of their purchase to the said Stewart Wood, as appears by an assignment in writing properly acknowledged by them, and duly recorded in the clerk's office of said Webster county, in Deed Book No. 5, page 468, a copy of which paper is hereto annexed, became the purchasers of a tract of land of sixty-five thousand seven hundred and thirty-four acres, which formerly belonged to and was returned delinquent in the name of Francis Hyland, for the non-payment of the taxes due thereon for the years 1875 and 1876, for the sum of
363 $595.92, that being the amount of taxes, interest, damages and commissions due thereon at the time of the said sale, including fee for receipts. And whereas, more than one year has elapsed since the date of the said sale, and the said real estate not having been redeemed, as provided for by law; and whereas, after the expiration of the said one year, to wit: on the 23rd day of April, 1881, the said Stewart Wood, in the manner prescribed by law, caused a report to be made to the clerk of the county court of the county of Webster, specifying the metes and bounds of the said tract of land so purchased as aforesaid, and giving such description

thereof as is sufficient to identify the same; and there being no valid objection to the said report, the same was on the 10th day of May, 1881, ordered by the said clerk to be recorded in his office, and a record thereof has been made accordingly, to which record now remaining in the office of the clerk of the county court of the said county of Webster, reference is here had; and whereas, no deed having been executed to the said purchasers or their assignees, under said sale the circuit court of the said county of Webster did, on the 7th day of April, 1881, by an order entered of record as aforesaid, appoint said B. C. Conrad, clerk of the said circuit court of said county, a commissioner, to make said deed, which order is in the words and figures following: "On application of Stewart Wood, and it appearing that at a sale made by P. F. Duffy, sheriff of Webster county, on the 25th day of November, 1879, of lands delinquent for the non-payment of taxes, Conrad, Miller and Dorr became the purchasers of a tract of land described as containing 65734 acres, and as lying in Webster county, on Gauley and Williams rivers, sold in the name of Francis Hyland, and that said purchasers have assigned the benefit of their purchase to said Wood, and that no deed has yet been made for said land under said tax sale, and no redemption appearing to have been made, and that B. P. Conrad claims to be one of said purchasers, and was at the time of such sale, and is now, clerk
364 of the county court of said county, it is ordered that B. C. Conrad, who is clerk of the circuit court of said county, who is hereby appointed a commissioner for the purpose, do execute, acknowledge and deliver to said Wood a deed for the said land in execution of such sale and purchase, such as is provided for and required by law in such case, reciting himself in such deed to be both such commissioner and such clerk." Now, therefore, this indenture witnesseth: That for and in consideration of the premises the party of the first part has bargained and sold, and by these presents doth grant, bargain, sell and convey unto the party of the second part, his heirs and assigns forever the real estate aforesaid situate in the county aforesaid on Gauley and Williams rivers, and bounded as follows, to wit: Beginning at a locust, a corner to Messingbird's, and running thence S. 57 E. 4220 poles to a white oak, N. 48 E. 1235 poles to Drenning's house, N. 18 E. 2170 poles to a sugar tree on the top of Alleghany, N. 61 E. 1600 poles to a pine, N. 53 W. 5600 poles to a white oak, S. 23 W. 5160 poles to the beginning, containing 65,734 acres, be the same more or less. To have and to hold the said real estate with its appurtenances unto the said Stewart Wood, his heirs and assigns forever.

Witness the following signatures and seals the day and year first above written.

B. C. CONRAD,
Clerk Circuit Court Webster Co. [SEAL.]
B. C. CONRAD,
Commissioner. [SEAL.]

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, B. P. Conrad, a notary public in and for said county, do hereby certify that B. C. Conrad, party to the foregoing deed, bearing date on the 12th day of May, 1881, this day personally appeared before me, in my county aforesaid, and acknowledged the same, as
365 clerk of the circuit court of said county and also as commissioner appointed by said court, to be his act and deed.

Given under my hand this 12th day of May, 1881.

B. P. CONRAD, *N. P.*

WEST VIRGINIA:

CLERK'S OFFICE, WEBSTER COUNTY COURT, *May* 13, 1881.

The foregoing deed from B. C. Conrad, clerk, &c., to Stewart Wood, together with the certificate of acknowledgment thereof thereto annexed, was this day admitted to record in said office.

Teste: B. P. CONRAD, *Clerk.*

366-371 *List of Real Estate within the County of Webster Sold in the Month of November, 1879, for the Non-Payment of Taxes Thereon for the Years 1875 and 1876, and Purchased by Individuals.*

No.	Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	Local description of land.	Amount of taxes due thereon for State and State school purposes, including interest and damages, for which sold.		Amount of county tax due thereon, including same.		Amount of district tax due thereon, including same.		Quantity of land charged.	Date of each sale.	Name of purchaser.	Amount of purchase-money paid, including interest, damages, commissions, and fee for receipt.
					1875.	1876.	1875.	1876.	1875.	1876.				
	Fork Lick district:													
1	Cherry, T. F	164	Fee	Point mountain	70	67	1 13	1 10	1 13	3 51	75	Nov. 25	C. McDodrill	9 90
2	Cochran, Cass A	100	"	Elk river	.....	40	.....	67	.....	1 93	100	" "	B. P. Conrad & J. A. J. Miller	3 40
3	Caperton, Allen T.	600	"	Gauley river	1 27	1 21	2 12	1 97	3 17	6 03	600	" "	Corley & Newlon	17 57
4	Same	350	"	" "	75	63	1 24	1 18	1 86	3 52	300	" "	Corley & Newlon	10 28
5	Connor, C. S., & McHenry	125	"	" "	51	.....	.....	84	.....	2 52	125	" "	Thompson & Woodzell	4 24
6	Hoffman, John S.	2,280	"	B'k F'k & P't Mt	.....	4 23	.....	7 64	.....	22 91	2,280	" "	E. Stringer Boggess	38 95
7	Hummel, Lewis R	127	"	North side of Elk	54	51	90	86	1 35	2 56	127	" "	Thompson & Woodzell	4 09
8	Holt, H. A	6,574	"	Gauley & Wm. river	13 89	13 21	23 18	22 03	34 75	66 07	6,574	" "	H. A. Holt	185 49
9	Hyland, Francis	65,374	"	Gauley & Williams river	41 68	39 63	69 46	66 05	112 28	198 15	65,734	" "	Conrad, Miller & Dorr	595 92
10	King, Wm. P	400	"	Grassey creek	92	.....	1 52	.....	2 28	.....	400	" "	P. L. J. Cogar	5 33
11	Same	190	"	" "	86	.....	1 45	.....	2 17	.....	190	" "	Same	4 73
12	Same	125	"	" "	27	.....	48	.....	70	.....	125	" "	Same	1 95
13	Mitchell, Edward	5,000	"	Elk & Grassey creek	9 94	10 05	17 60	6 75	26 52	50 24	5,000	" "	E. Stringer Boggess	135 63
14	Phairs, A. W. J	12½	"	Elk river	11	.....	20	.....	30	.....	2	" "	C. E. Duffy	78
15	Phairs, Wm. T	40	"	" "	.....	40	.....	67	.....	2 01	40	" "	Same	3 79
16	Phairs, J. A. W. S	40	"	" "	.....	40	.....	67	.....	2 01	40	" "	J. N. Cool	3 79
17	Phairs, John	40	"	" "	.....	40	.....	67	.....	2 01	40	" "	C. E. Duffy	3 79
18	Smith & Gillizan	270	"	" "	58	55	96	91	.....	2 75	270	" "	Elizabeth Curry	8 34
19	Snyder, Harmon, & others	146	"	Holly & Sugar creek	35	33	59	56	.....	1 69	146	" "	J. Paul Boggess	5 14
20	Thorn, Dennis M., and others	270	"	Elk river	.....	55	.....	91	.....	1 39	270	" "	Elizabeth Curry	3 45
21	Young, Samuel, & D. B. Dorsey	187	"	Near John McGun's	.....	39	.....	63	.....	1 90	187	" "	B. C. Conrad	3 52
	Glade district:													
21	Caperton, A. T	11,459	"	Williams river	19 39	18 43	32 37	30 78	41 99	55 29	11,459	" "	P. B. Adams	214 36
22	Dillon, Sarah E	300	"	Laurel creek	.....	60	.....	1 00	.....	1 81	75	" "	S. C. Woods	4 00
23	Fisher & Poundstone	1,504	"		6 37	.....	9 77	.....	13 78	.....	1,504	" "	W. L. J. Corley & C. K. Newlon	32 57
24	Hannah, David's, heirs	1,243	"	Birch & Beaver	.....	2 49	.....	4 17	.....	7 48	828½	" "	S. C. Woods	16 14
25	Hoffen, John S	1,000	"	Laurel creek	.....	2 01	.....	3 25	.....	6 03	500	" "	P. B. Adams	13 27
26	Hollister, A.'s, heirs	4,581	"		7 73	.....	12 91	.....	16 74	.....	4,581	" "	Corley & Newlon	40 62
27	Holt, H. A	50	"	Head Birch	.....	40	.....	67	.....	1 21	50	" "	H. A. Holt	2 79

28	Martin, J. G	2,000	"	Laurel	4 23		6 34		9 15		2,000	"	"	C. K. Newlon	23 33
29	Rayner, Jas. H	94	"	Laurel creek		39		63		1 15	94	"	"	Samuel Given	6 65
30	Ruckman, David H	200	"	Gauley & Wm. river	85		1 41		8 24		200	"	"	G. M. Sawyers	6 30
31	Thompson, John, Jr	3,896	"	Head Birch	8 22	7 83	13 16	13 05	17 95	23 46	3,896	"	"	Corley & Adams	91 09
32	Gum, Lydia	200	"	Gauley & Wm. river	85		1 41		1 83		200	"	"	P. B. Adams	4 82
	Holly district:														
1	Bennett, J. M., and J. S. Hoffman.	2,000	"	Holly waters	4 65	4 42	7 34	7 37	13 17	16 21	2,200	"	"	E. Stringer Boggess	59 79
2	Hoffman, J. S., & others	407	"	Buckhannon		3 00		4 98		10 97	407	"	"	Same	6 17
3	Holt, H. A	1,000	"	Holly	2 11	2 01	2 52	3 35	5 97	7 37	1,000	"	"	Conrad & Miller	56 62
4	Lorenback, J. A	918	"		1 95		2 85		5 51		918	"	"	Corley & Cunningham	11 36
5	Perrine, M. W	4	"	Holly waters	04	04	06	06	11	12	4	"	"	Conrad & Miller	75
6	Salisbury, Sampson	5	"	Hacker's valley		16		27		59	5	"	"	B. C. Conrad	1 37
7	Woods, Thomas, heirs	3,500	"	Holly river		7 03		11 72		25 79	3,500	"	"	Adams & Corley	149 57
8	Clark, Geo. B	100	"	L. Kanawha waters	42		70		1 20		100	"	"	B. C. Conrad	2 84

I, P. F. Duffy, sheriff of the county of Webster, do swear that the above list contains a true account of all the real estate within my county which has been sold by me to individuals during the present year for non-payment of taxes thereon for the years 1875 and 1876, and that I am not directly or indirectly interested in the purchase of any — said real estate, so help me God.

P. F. DUFFY, *Sheriff.*

Sworn and subscribed to before me this 4th day of December, 1879.

B. P. CONRAD,
Clerk Webster County Court.

STATE OF WEST VIRGINIA,
Webster County, } *To wit:*

I, Charles W. Benedum, clerk of the county court of said Webster county, do hereby certify that the foregoing is a true copy of the sheriff's report of lands sold in the month of November, 1869, and purchased by individuals, for the non-payment of the taxes due thereon for the years 1875 and 1876, as appears from the records of my office.

Given under my hand this 28th day of April, 1885.

C. W. BENEDUM.

"EXHIBIT I."

List of Real Estate within the County of Webster Sold in the Month of September, 1871, *for the Non-Payment of Taxes Thereon for the Years* 1869 *and* 1870.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	In what township land situated.	Local description of land.	Amount of taxes due thereon for State and school purposes, including interest, damages, and commissions.		Amount of county tax due thereon, including same.		Amount of township tax due thereon, including same.		Quantity of land sold.	Name of each purchaser.	Amount of purchase-money paid, including interest, commissions, and fee for receipt.	Date of each sale.
					For the yr. 1869.	For the yr. 1870.	For the year 1869.	For the yr. 1870.	For the yr. 1869.	For the yr. 1870.				
Arthur, R. A	1,000	"	"	Little Grassy creek	6 67	1 53	13 82	4 42	5 35	.....	1,000	Homer A. Holt	$21 73	Sept. 25.
Same	220	"	"	Big Grassy creek	" 37	" 41	2 61	1 23	" 76	.....	220	Homer A. Holt	6 74	" "
Same	1,000	"	"	Little Grassy creek	1 78	1 96	11 48	5 61	3 56	.....	1,000	Homer A. Holt	30 18	" "
Same	155	"	"	Big Grassy creek	" 26	" 29	1 84	" 86	" 57	.....	155	Homer A. Holt	4 85	" "
Same	289½	"	"	Same	2 57	1 79	17 19	5 70	5 08	1 12	289½	Homer A. Holt	35 57	" "
Same	100	"	"	Same	" 89	" 61	5 94	1 77	.....	.....	100	Homer A. Holt	12 72	" "
Same	250	"	"	Near Fork Lick	" 83	" 91	5 50	2 60	1 65	.....	250	Bernard Mollohan	14 22	" "
Arthur, Wm. R.'s, heirs.	100	"	"	Holly river	" 33	" 19	2 38	" 31	" 69	.....	100	W. F. Morrison	4 90	" "
Same	200	"	"	Big Grassy creek	" 34	" 22	2 20	" 62	" 62	.....	200	Same	5 13	" "
Arthur, John W	148¼	"	"	Between Elk & G. C	.....	" 26	.....	" 77	.....	.....	148¼	Same	1 48	" "
Adkison, James A	140	"	"	Laurel creek	50	" 54	3 32	1 57	2 22	.....	60	Enos Weese	7 71	" "
Allen, Francis	1,000	"	"	Waters of Holly	.....	" 91	.....	2 60	.....	.....	1,000	Bernard Mollohan	4 49	" "
Bridges, William	30,000	"	"	Gauley river	14 85	21 84	99 00	62 40	29 70	.....	30,000	Benj. Rich & Thornton Conrow.	275 30	Sept. 26.
Bowen, William	30,000	"	"	Same	.....	21 84	.....	62 40	.....	.....	30,000	Benj. Rich & A. T. Bisel, Jr.	100 76	" "
Byrne, John P., heirs	100	"	"	Laurel creek	89	98	5 90	2 80	44	.....	100	Benj Rich	13 59	" "
Bard, Daniel, heirs	680	"	"	Near Lane's bottom	2 41	2 66	16 16	7 63	1 21	.....	680	Andrew McElwain & Benj. Rich.	36 56	" "
Brake, L. J., heirs	287	"	"	Old Lick run	1 02	26	6 84	75	34	.....	287	Vincent M. Roby	11 36	" "
Same	189	"	"	Waters of Holly	69	17	4 71	43	23	.....	189	Bernard Mollohan	7 85	" "
Byrne, B. W., & J. N. Camden.	500	"	"	No description	53	58	3 52	1 66	18	.....	500	Bernard Mollohan	8 07	" "
Ches. & Ohio R. R. Co.	2,738	"	"	Gauley & Wm. river	.....	2 11	.....	6 09	.....	.....	2,738	B. Rich	10 15	" "

Same	5,938	"	"	Same		5 39		15 43			5,938	Benjamin Rich	25 38	"	"
Same	9,330	"	"	Same		8 47		24 25			9,330	Benjamin Rich	39 13	"	"
Same	350	"	"	Same		30		90			350	Benjamin Rich	1 70	"	"
Same	5,000	"	"	Same		4 55		13 00			5,000	Benjamin Rich	19 34	"	"
Caperton, Allen T	600	"	"	Same		54		1 56			600	W. L. J. Corley	2 79	"	"
Camp, Jas., & R. Erwin	2,000	"	"	No description	2 64	2 71	19 80	8 32	1 32		2,000	W. L. J. Corley	42 50	"	"
Cowan, John F	2,350	"	"	Wm. river	1 69	1 86	11 39	5 38	85		2,350	Benjamin Rich and A. T. Bisel.	25 81	"	"
Same	2,350	"	"	Same	1 69	1 87	11 49	5 38	85		2,350	Same	25 82	"	"
Same	2,350	"	"	Same	1 69		11 39		86		2,350	Same	29 05	"	"
Same	1,850	"	"	Part of the above tract of 2,350 acres.		1 67		4 80			1,850	Same	8 06	"	"
Cook, Henry D	2,350	"	"	Williams river	1 69	1 67	11 39	5 38	86		2,350	Same	25 82	"	"
Ches. & O. R. R. Co	8,213	"	"	Welch glade		5 97		17 08			8,213	Benjamin Rich	28 08	"	"
Camp, Jas., heirs	7,842	"	"	Elk river	6 90	7 72	46 59	22 02	2 33		7,842	Albert Owen	103 68	"	"
Clothnie, Samuel	706½	"	"	No description	1 25		8 39				706	James Woodzell	10 84	"	"
Duffy, Virginia	83	"	"	Grassey creek		29		86			83	Bernard Mollohan	1 63	26th Sept.	
De Fleury, Viscount Clifford.	100,000	"	"	Gauley & Wm. river	For the yr. 1866.	72 85		208 13			100,000	B. Rich & T. Conrow	332 55	"	"
Gumm, Lydia S	200	"	"	Between same	32	73		2 08			200	B. Rich	4 38	"	"
Holt, Homer A	500	"	"	Jerry's Fork, Kanawha	1 03						500	Homer A. Holt	1 40	"	"
Hollis, Paulina	1,600	"	"	Back fork of Elk	For the yr. 1869.	1 16		3 83			1,600	Benjamin Rich	5 67	"	"
Hannah, David's, heirs	1,249	"	"	Beaver & Birch	1 17	1 23	7 41	3 40	4 80		1,249	Homer A. Holt	16 67	"	"
Haymond, B. M., heirs	1,000	"	"	No description	89	99	5 94	2 81	30		100	Wm. L. J. Corley	13 42	"	"
Same	680	"	"	No description	89	99	5 98	2 83	29		680	Wm. L. J. Corley	13 83	"	"
Haymond, W. C	1,000	"	"		1 78	1 96	11 88	5 62	59		1,000	Wm. L. J. Corley	26 60	"	"
Henley, C. S	100	"	"	Holly river	07	07	48	23	02		100	Wm. L. J. Corley	1 30	"	"
Same	3,500	"	"	Same	2 54	2 81	16 94	8 01	19		3,500	Wm. L. J. Corley	36 82	"	"
Holt, Homer A	2,600	"	"	Old Lick run	2 15	2 37	14 30	6 76	72		2,600	Homer A. Holt	32 01	"	"
Jones, John W	50	"	"	Birch river	1 65	36	2 20	1 04	83		50	Homer A. Holt	7 50	"	"
King, Wm. P	400	"	"	Grassy creek	71	79	4 75	2 25	1 42		400	John S. Hoffman	12 23	"	"
Same	190	"	"	Same	67	1 77	4 51	2 13	1 35		190	John S. Hoffman	12 85	"	"
Same	125	"	"	Same	20	22	1 49	69			125	John S. Hoffman	3 28	"	"
Lynch, Isaac's, heirs	70	"	"	Spillman mountain	50	55	3 32	1 51	25		70	James Woodzell	8 61	"	"
Same	100	"	"	Miller run	53	57	3 56	1 78	1 06		100	James Woodzell	9 31	"	"
Same	155	"	"	Near Elk river	54	59	3 70	1 74	1 09		155	James Woodzell	9 53	"	"
Low, Levi	270	"	"	On Elk river	For yr. 1866.	99 For the yr. 1865.	2 81				270	Bernard Mollohan	4 83	"	"
Miller, John J	50	"	"	Adjoining Quamm	26						50	Isaac H. Griffin	56	"	"
Moore, Henry C	76	"	"	Point mountain	17	95					76	Bernard Mollohan	1 60	"	"
Myers, Cuttip	400	"	"	No description	$1 42		9 50		1 98		400	Benjamin Rich	15 59	"	"
Moore, Henry C	787	"	"	On Leatherwood	1 39	76	9 35	2 16	2 77		787	Homer A. Holt	17 76	"	"
Moore, Henry C	17,960	"	"	Part of grant, Elk river	12 44		82 97		24 90		17,960	Homer A. Holt	145 82		"

Exhibit I—Continued.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	In what township land situated.	Local description of land.	Amount of taxes due thereon for State and school purposes, including interest, damages, and commissions.		Amount of county tax due thereon, including same.		Amount of township tax due thereon, including same.		Quantity of land sold.	Name of each purchaser.	Amount of purchase-money paid, including interest, commissions, and fee for receipt.	Date of each sale.
					For the yr. 1866.	For the yr. 1865.	For the year 1869.	For the yr 1870.	For the yr. 1869.	For the yr. 1870.				
Moore, Henry C	17,810	"	"	Same		13 34		38 14	1 49		17,810	Homer A. Holt	62 40	26th Sept.
Moore, Henry C	450	"	"	Point mountain	75	82	4 95	2 34	1 49		450	Theron R. Cherry	11 69	" "
Moffitt, S H	300	"	"	Same	54	58	3 52	1 68	1 07		300	John W. Horner	9 19	" "
McElwain, Van Buren	114	"	"	Welch glade	37	42	2 51	1 21			114	Homer A. Holt	5 60	" "
McLaughlin, Duncan	2,664	"	"	Gauley river	1 73		11 64		85		2,664	Pearson B. Adams	17 42	" "
McCray, James	1,294½	"	"	Holly & Jerry's run	2 28		15 38				1,294½	Harrison Lowther	21 58	" "
Same	1,500	"	"	Hodam creeck	2 67		17 82				1,500	Thomas L. McCray	24 99	" "
Night, John	100	"	"	Birch river	70	36	4 75	1 04	35		50	W. L. J. Corley	8 94	" "
Parnell, Thos., heirs	2,244½	"	"	No. 27	1 99	2 19	13 33	6 30	66		2,244½	John S. Hoffman	29 80	26th Sept.
Same	3,000	"	"	No. 28	2 67	2 95	17 86	8 42	89		3,000	John S. Hoffman	40 53	" "
Perrine, John C., heirs	387	"	"	Holly river		73		2 01			387	Felix J. Baxter	3 66	" "
Patterson, Joseph	187,000	"	"	Holly & Elk		136 23		397 21			187,000	Samuel Christ	634 72	" "
Reed, Frederick	10,000	"	"	Gauley	5 25	7 28	33 00	20 80	9 90		10,000	Benj. Rich & A. T. Bisel, Jr.	91 95	" "
Rodger, Drury's, heirs	150	"	"	Between Elk & Gauley	53	68	3 56	1 68	10 96		150	Andrew McElwain & B. Rich.	9 92	" "
Reynolds, Thos. D., & wife.	170	"	"	Stroud's glades	59		4 04		30		170	John W. Horner	6 17	" "
Rayner, James H	194	"	"	Laurel creek	13		94		07		194	W. F. Morrison	1 62	" "
Reese, John M., & Allen Love.	503	"	"	Welch glade	3 30	1 82	22 13	5 23	1 66		503	Pearson B. Adams	41 48	" "
Reeder, Benjamin	5,000	"	"			3 64		10 40			5,000	Benj. Rich & A. T. Bisel, Jr.	17 20	" "
Sawyers, Isaac's, heirs	150	"	"	N. S. Gauley	83		3 38		1 00		150	W. F. Morrison	6 39	" "
Stockton, Aaron	510	"	"	Gauley river	4 53	3 71	30 29	10 60	2 86		510	A. McElwain & A. Rader	59 59	" "
Stockton, John	500	"	"	Gauley & Wm. river		45		1 30			500	Benjamin Rich	2 36	" "
Sutton, Samuel	2,240	"	"	Elk river		1 11		4 58			2,240	Benj. Rich & A. T. Bisel, Jr.	7 82	" "

Simms, Charles, & Chas. Lee.	200,000	"	"	Elk & Birch river		145 70		416 27			200,000	Benj. Rich & P. B. Crider.	678 83	"	
Thompson, John	3,986	"	"	Head of Birch		6 71		19 09			3,986	W. L. J. Corley	32 12	"	"
Vanzandt, Wm. L	1,500	"	"	Leatherwood	1 03	1 14	6 93	3 28	2 08		1,500	James Woodzell	17 71	"	"
Same	1,000	"	"	Same	1 78 For the yr. 1868.	1 96	11 88	5 62	3 56		1,000	J. W. Horner	30 19	"	"
Wallace, M. J., J. W. Warwick, & W. F. Strong.	1,000	"	"	Gauley waters	1 06 For the yr. 1869.	73		2 08			1,000	Bernard Mollohan	4 92	"	"
Ware, Richard B	83	"	"	Grassy creek	73	80	4 93	2 46	1 45		83	W. L J. Corley	12 87	"	"
Wilson, J. D., & J. S. Hoffman.	2,280	"	"	Point mountain	2 39		14 05		4 79		2,280	John S. Hoffman	28 29	"	"
Woods, Edward's, heirs	1,000	"	"	Sugar creek	89	91	3 74	2 81	1 78 Back tax 1868.		1,000	John S. Hoffman	15 24	"	"
Warwick, Jno. W., & J. W.	4,523	"	"		1 51	1 64	9 97	4 75			4,523	Benj. Rich	21 80	"	"
Woods, Zachariah's, heirs.	88	"	"	Elk river	79	24	5 23	91	26		88	Homer A. Holt	9 22	"	"
Same	35	"	"	Same	31	15	2 08	41	10		35	Homer A. Holt	3 85	"	"
Young, Wm. C	300	"	"	Laurel creek	1 12	1 16	7 13	3 37	53		300	W. L. J. Corley	16 15	"	"
Young, Sarah A	80	"	"	Same	29	32	1 46	89	14		80	Same	3 91	"	"
Young, Martha A	80	"	"	Same	29	32	1 46	89	14		80	Same	3 91	"	"

I, Hazel W. Rader, deputy, for Austin Rader, sheriff of the county of Webster, do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year for the non-payment of taxes thereon for the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, & 1870, and that I am not directly or indirectly interested in the purchase of any of said real estate, so help me God.

H. W. RADER, *Deputy*, for A. RADER, *Sheriff*.

Sworn to and subscribed before me this — day of October, 1871.

J. WOODZELL, *Recorder*.

STATE OF WEST VIRGINIA, } *To wit:*
Webster County, }

I, Charles W. Benedum, clerk of the county court of said county, do hereby certify that the foregoing is a true and complete copy of the sheriff's report of lands sold by him in the month of September, 1871, for the non-payment of the taxes due thereon for the years mentioned therein, as shown by the records of my office.

Given under my hand this 28th day of April, 1885.

C. W. BENEDUM, *Clerk*.

List of Real Estate within the County of Webster Sold in the Month of October, 1875, for the Non-Payment of Taxes Thereon for the Years 1871, 1872, 1873, & 1874 and Purchased by Individuals.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	Local description of land.	Amount of taxes due thereon for State and school purposes, including interest, damages, and commissions.				Amount of county taxes due thereon, including same.				Amount of district tax due thereon, including same.				Quantity of land sold.	Date of each sale.	Name of purchaser.	Amount of purchase money paid, including interest, damages, commission, and fee for receipt.
Fork Lick district:				1871.	1872.	1873.	1874.	1871.	1872.	1873.	1874.	1871.	1872.	1873.	1874.				
Arnold, Jonathan	416	Fee	F'ks Leatherwood				79				2 16				1 74	416	Oct. 5th	Vincent Hamrick.	$5 13
Arthur, John W	148⅗	"	Between Elk & Grassy c'k.	35	33			2 09	99			49	56			148⅗	" 6th	Thomas J. Miller.	5 18
Arthur, R. A	155	"	Big Grassy creek	39	37			2 35	1 12			56	64			155	" "	John E. Hall	6 25
Arthur, Wm. R.'s, heirs.	200	"	Big Grassy creek	30	24			1 69	80			42	48			200	" "	James Woodzell	4 60
Same	100	"	Holly river	25	24			1 41	67			35	40			100	" "	John E. Hall	3 91
Benziger, Mathias	50¾	"	Point mountain			5				23				10		50¾	Oct. 5th	Adam G. Hamrick.	67
Caperton, Allen T	600	"	Gauley & Wm. river.		88	65	54		2 01	2 76	1 43		1 20	1 41	99	600	" "	Thos. J. Cogar & Wallace Hollister.	13 60
Cabell, Lyon & Goddin	1,650	"	Point mountain		3 85	3 64	2 96		11 05	15 15	7 90		6 62	7 84	5 43	1,650	" "	W. L. J. Corley & P. B. Adams.	72 31
Caperton, Allen T	500	"	Gauley & Wm. river.				40				1 20				83	500	" "	Cheuvront, T. M.	3 01
Same	350	"	Gauley & Wm. river.				30				89				55	350	Oct. 5th	Cheuvront, T. M.	2 12
Duffy, Virginia	83	"	Grassey creek	39				2 31				56				83	" 6th	D. H. Lough	3 85
Hollis, Paulina	1,600	"	Back fork of Elk		1 50				4 28				2 50			1,600	" 6th		9 45
Highland, Thomas	65,734	"	Gauley & Wm. river.				23 64				62 83				43 33	65,734	" 5th	Benjamin Rich	143 34

Lynch, Isaac's, heirs	70	"	Spillman mountain.		71				2 00					1 20		70	" 6	James Woodzell	4 77
Same	100	"	Miller run		75				2 16					1 28		100	" "	James Woodzell	4 90
Same	155	"	North side of Elk		76				2 87					1 32		155	" "	James Woodzell	5 00
McLaughlin, Duncan.	310	"			76	72		4 35	2 07			1 08	1 34			310	" 6th	P. F. Duffy	11 54
Same	98	"	Back fork	3 33	3 16	3 11		19 29	9 17			4 74	5 41	6 42		98	" 5th	P. F. Duffy	74 54
Same	175	"	Back fork	2 07	2 12	1 78						2 81	3 21	3 80		175	" "	James Woodzell	44 02
Same	269	"	" "	2 76	2 79	2 56						3 93	4 57	4 14		269	" "	James Woodzell	41 02
Middlebrook, Lewis N.	2,000	"	No. 19, Elk river			2 40	1 94			9 92	5 17			5 13	3 56	75	" "	Charles McDoddrill.	31 25
Middlebrook, E. & Robert.	2,000	"	" " "	2 66	2 52			15 18	7 22			5 20	4 33			2,000	" "	Charles McDoddrill.	41 17
Moore, H. C.	20	"	Point mountain	10	09	9		56	27	37		14	16	19		5	" 6	Theron R. Cherry.	2 68
Mathews & McCandlish.	1,000	"	Gauley river			89	72			3 67	1	92		1 90	1 32	1,000	" 5	Joseph A. Alderson.	12 69
Same	1,000	"	" "			89	72			3 67	1	92		1 90	1 32	1,000	" "	Joseph A. Alderson.	12 69
McDaniel, Chas. R., ex'r & trustee of W. T. Clark.	1,000	"	Right fork of Holly.	1 24		1 12	90	7 03		4 60	2 40	5 97		2 49	1 66	1,000	" "	Joseph A. Alderson.	30 62
Michelson, O. H	770	"	Big Run & Burgoo				68				1 85				1 60	770	" "	Charles McDoddrill.	4 41
Same	690	"	" "				61				1 66				1 11	690	" "	Joseph A. Alderson.	3 75
Same	76	"	Point mountain				07				18				13	76	" "	Charles McDoddrill.	68
Same	50¾	"	" "				04				12				07	50¾	" "	P. F. Duffy	52
Same	43	"	" "				04				11				07	43	" "	Charles McDoddrill.	50
Moore, H. C.	150	"	Point mountain	38	36			2 10	6 00			53	50			150	" 6	Holt, H. A	5 73
Same	17,514	"	Adam's land		17 27				49 22				29 60			17,514	" "	Holt, H. A	106 19
Same	11,840	"	Adam's land, less 236, on which tax required.		18 01			107 80				21 94				11,840	" "	Holt, H. A	161 55
Miller, Robert's, heirs.	124½	"	Spillman mountain.	1 21				7 26				1 13				124½	" "	Thomas J. Miller.	11 50
Martin, Joseph G	50¾	"	Pt. Mt.				04				12				07	50¾	" "	P. F. Duffy	52
Otto, Bodo	9,000	"					6 78				18 12				12 46	9,000	" "	Wm. L. J. Corley.	41 44
Peck, Solomon			Lot in Fork Lick				04				10				07	Whole lot.	" "	P. F. Duffy	49
Rogers, Drury's, heirs.	150	"	Head Laurel creek	78	75		4 36	2 16				1 12	1 38			150	" "	A. McElwain & W. L. J. Corley.	11 78
Sawyer's, Isaac J., heirs.	150	"	Gauley mountain	2 14	71	67	54	2 00	2 76		1 43	1 35	1 20	1 69	99	150	" "	G. M. Sawyers	22 23
Smith & Gilligan	270	"	Elk river				97				2 59				1 78	270	" "	P. F. Duffy	6 14
Thom, D. M., *et al*	270	"					97				2 59				1 78	270	" "	P. F. Duffy	6 14
Wolverton, Geo. W.	139	"	" mountain			61				2 56				1 30		139	" "	W. L. J. Corley & A. McElwain.	5 18

Exhibit T—Continued.

Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	Local description of land.	Amount of taxes due thereon for State and school purposes, including interest, damages, and commissions.				Amount of county taxes due thereon, including same.				Amount of district tax due thereon, including same.				Quantity of land sold.	Date of each sale.	Name of purchaser.	Amount of purchase-money paid, including interest, damages, commission, and fee for receipt.
				1871.	1872.	1873.	1874.	1871.	1872.	1873.	1874.	1871.	1872.	1873.	1874.				
Young, Sam'l, & D. B. Dorsey.	187	Fee	Near J. M. McGinnis.	.....	.....	.....	17	.....	.....	.....	44	.....	.....	.....	30	187	Oct. 6	B. Mollohan.....	3 62
Same tract, back taxes for 1872 & 1873.	.....	.....	.....	.....	.....	.....	48	.....	.....	.....	72	.....	.....	.....	71	187	" "		
Glade district:																			
Buckley, Ralph.....	50,000	Fee	Part of Walcott.....	.....	.....	222	.....	.....	.....	9 19	.....	.....	.....	2 22	.....	50,000	" 5th	P. B. Adams.....	15 31
Chapman, John's, heirs.	85	"	Waters of Birch...	88	92	80	65	5 16	12	3 37	1 77	25	24	80	97	85	" "	Robert Morton..	18 07
Caperton, A. T.....	11,459	"	Wm. river.....	.....	.....	.....	8 24	.....	.....	.....	21 97	.....	.....	.....	12 35	11,459	" "	P. B. Adams	47 17
Davis, Simeon T.....	100	"	Birch river.....	.....	.....	11	.....	.....	.....	46	.....	.....	.....	11	.....	1 00	Oct. 5th	D. D. Campbell.	1 00
Given, J. G.'s, heirs, and Robert Given.	750	"	Waters Laurel creek.	90	80	.....	.....	5 27	2 49	.....	.....	.....	25	24	.....	750	Oct. 6th	Wm. L. J. Corley	11 29
Given, Robert	150	"	Stroud's glades.....	.....	1 41	.....	.....	.....	4 01	.....	.....	.....	.....	40	.....	150	" "	S. C. Woods.....	6 68
Hummel, Lewis R...	500	"	Amos's fork, Laurel.	.....	.....	.....	1 80	.....	.....	.....	4 79	.....	.....	.....	2 69	500	" 5th	W. L. J. Corley..	10 49
Martin, Joseph G....	90,000	"	Elk & Gauley.....	.....	.....	.....	32 32	.....	.....	.....	86 30	.....	.....	.....	48 54	90,000	" "	T. F. Cherry.....	184 54
Norman, H. B.....	2,700	"	Birch & Beaver....	.....	.....	.....	4 86	.....	.....	.....	12 94	.....	.....	.....	7 27	2,700	" "	A. McElwain and W. L. J. Corley.	51 46
Same tract, back taxes for 1872 & 1873.	.....	.....	.....	.....	.....	.....	10 57	.....	.....	.....	.....	.....	.....	.....	10 57				
Night, John.....	100	"	Birch river.....	49	.....	.....	.....	2 81	.....	.....	.....	14	.....	.....	.....	100	Oct. 6th	W. L. J. Corley..	4 05
Ruckman, David L..	200	"	Gauley & Wm. river.	98	94	89	72	5 62	2 67	3 67	1 92	28	27	89	1 08	200	" 5th	Geo. M. Sawyers	22 15

Raynor, James H.....	94	"	Laurel creek.....	22	23	22	17	1 33	63	86	46	07	07	20	25	94	" "	D. D. Campbell..	5 71
Roller & Smith	2,000	"	Amos' fork.....	.....	.....	.....	7 20	.....	.....	.....	19 20	.....	.....	.....	10 80	2,000	" "	P. F. Duffy.....	41 27
Same.....	952	"	" "	.....	.....	.....	3 42	.....	.....	.....	9 14	.....	.....	.....	5 08	952	" "	P. F. Duffy.....	19 71
Roller & Smith	1,029	"	Amos' fork.....	.....	.....	.....	3 71	.....	.....	.....	9 87	.....	.....	.....	5 57	1,029	" "	P. F. Duffy.....	21 46
Same.....	1,000	"	" "	.....	.....	.....	3 60	.....	.....	.....	9 60	.....	.....	.....	5 40	1,000	" "	P. F. Duffy.....	15 25
Same.....	476	"	Elk river.....	.....	.....	.....	90	.....	.....	.....	2 41	.....	.....	.....	1 36	476	" "	P. F. Duffy.....	5 40
Stockton, Aaron.....	510	"	Gauley river.....	5 00	.....	.....	3 67	28 68	.....	.....	9 78	1 43	.....	.....	5 51	510	" "	D. D. Campbell..	60 12
Stockton, John.....	500	"	Gauley & Wm. river.	60	.....	.....	.....	3 52	.....	.....	.....	17	.....	.....	.....	500	" 6th	B. Rich.....	3 88
For 1871 & 1872, charged 39 86.																			
Thompson, John, Jr.	3,896	"	Head Birch.....	9 61	9 31	8 74	7 18	53 23	26 64	38 64	19 13	2 66	2 66	8 84	10 75	3,986	" 5th	W. L. J. Corley..	215 87
Williams, Chas. T....	640	"	Walcott land.....	.....	.....	.....	24	.....	.....	.....	.....	.....	.....	.....	37	640	" 6th	Thomas Rutherford.	1 58
Same	640	"	" "	.....	.....	.....	24	.....	.....	.....	.....	.....	.....	.....	37	640	" "	Thomas Rutherford.	1 58
Same	640	"	" "	.....	.....	.....	24	.....	.....	.....	.....	.....	.....	.....	37	640	" "	Thomas Rutherford.	1 58
Young, Wm. C.'s, heirs.	300	"	Laurel creek..	1 58	1 52	.....	.....	9 11	2 99	.....	.....	45	44	.....	.....	300	" "	James A. Adkison.	18 00
Holly district:																			
Allen, Francis.....	1,000	"	Holly river.....	.....	.....	.....	90	.....	.....	.....	2 40	.....	.....	.....	1 95	1,000	" 5th	Joseph A. Alderson.	6 00
Brake, L. J.'s, heirs..	189	"	Lick run.....	.....	.....	.....	17	.....	.....	.....	46	.....	.....	.....	36	189	" "	B. C. Conrad.....	1 36
Brooks, John.....	50	"	Elk river.....	25	.....	.....	.....	1 52	.....	.....	.....	07	.....	.....	.....	50	" 6th	Samuel C. Miller	2 39
Brake, L. J.'s, heirs..	287	"	Old Lick run.....	.....	33	.....	.....	.....	98	.....	.....	.....	09	.....	.....	287	" "	B. C. Conrad.....	1 81
Clifton, E. B., heirs..	70	"	Between Elk & Holly.	20	19	18	.....	1 04	51	71	.....	06	05	13	.....	70	" 5th	Adam H. Guyon	4 03
Cherry, T. F.....	990	"	B'k L. K.....	.....	.....	89	.....	.....	.....	3 63	.....	.....	1 14	.....	.....	990	" "	Marshal A. Jordan.	6 22
Haymond, B. H., heirs.	1,000	"	Holly river.....	1 33	1 27	1 20	99	7 59	3 61	5 10	2 59	38	27 09	1 53	2 35	100	" "	W. L. J. Corley..	31 71
Same	181	"	Between Elk & Holly.	62	33	30	29	2 14	97	1 32	70	18	09	42	57	180	" "	W. L. J. Corley..	9 26
Hooper, Sam'l H.....	640	"	Head Old Lick run.	.....	.....	.....	1 15	.....	.....	.....	3 70	.....	.....	.....	2 50	640	" "	Thomas F. Cogar.	7 66
Jordan, Andrew, heirs.	200	"	Part of 1,000, left fork Holly.	.....	.....	.....	54	.....	.....	.....	1 44	.....	.....	.....	1 18	200	" "	Jesse B. Jordan.	3 73
McCourt, James.....	125	"	Elk river.....	.....	.....	.....	67	.....	.....	.....	1 80	.....	.....	.....	1 50	125	" "	S. C. Miller.....	4 65
Newlon, Wm. P., & J. N. Camp's heirs.	1,000	"	Brown's mountain.	.....	.....	89	72	.....	.....	3 67	1 92	.....	.....	1 14	1 56	1,000	" "	Marshall H. Jordan.	11 17
Perrine, John, Chas., Mathew.	4	"	Holly waters.....	.....	.....	.....	4	.....	.....	.....	07	.....	.....	.....	07	4	" "	B. C. Conrad.....	45
Roller, John E., *et al.*	2,600	"	Old Lick run.....	.....	.....	.....	5 05	.....	.....	.....	13 46	.....	.....	.....	11 04	2,600	" "	D. D. Campbell..	32 72
Tavner, Caleb, heirs.	97	"	B'k f'k, Kanawha..	.....	9	9	07	.....	25	35	19	.....	3	11	15	97	" "	B. C. Conrad.....	1 31
Same	500	"	" " ..	49	.....	.....	.....	2 81	.....	.....	.....	14	.....	.....	.....	500	" "	B. C. Conrad.....	4 05
Woods, Thomas.....	3,500	"	Holly river.....	.....	.....	.....	2 77	.....	.....	.....	7 39	.....	.....	.....	6 01	3,500	" "	W. L. J. Corley..	18 08

WEBSTER COUNTY CLERK'S OFFICE, *October 13th*, 1875.

I, Samuel Given, sheriff of the county of Webster, do swear that the above list contains a true account of all the real estate within my county which has been sold by me to individuals during the present year for the non-payment of taxes thereon for the years 1871, 1872, 1873, & 1874, and that I am not directly or indirectly interested in the purchase of any of said real estate, so help me God.

SAMUEL GIVEN, *Sheriff*.

Sworn to and subscribed before me this 13th day of October, 1875.

G. M. SAWYERS, *Clerk*.

STATE OF WEST VIRGINIA, *Webster County*, } *To wit:*

I, Charles W. Benedum, clerk of the county court of said county, do certify that the foregoing is a true and complete copy of the list of lands sold to individuals in the month of October, 1875, by the sheriff of Webster county for the non-payment of the taxes due thereon for the years 1871, 1872, 1873, & 1874, as appears from the records of my office.

Given under my hand this 27th day of April, 1885.

C. W. BENEDUM, *Clerk*.

388 EXHIBIT "P," FILED WITH PLAINTIFFS' 2ND AMENDED AND SUPPLEMENTAL BILL.

Ferdinand F. Sharp and Wife
to
Walter Wood, Trustee, &c. } Deed.

This indenture made the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-two between Ferdinand F. Sharp, and Lydia, his wife, of the first part, and Walter Wood, of Philadelphia, trustee for Richard, Edward R., George and Randolph Wood, as also for himself in equal undivided portions of the second part, witnesseth: That the said party of the — for and in consideration of the sum of seven thousand five hundred dollars lawful money of the United States of America, well and truly paid by the said — of the second part to the said party of the first part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, his heirs and assigns, all the certain one-sixth undivided title or interest to following-described lands situated in the State of West Virginia, and in the county of Webster; First: Beginning at a birch standing on a small rise forty poles from the mouth of a run that puts into Gauley river, being a point about two miles and three-quarters more or less, in a southwesterly direction from the court-house

of said Webster county, south thirty degrees west ten hundred and thirty poles from Fork Lick, running thence south thirty-five degrees, west five thousand and twenty poles, crossing Gauley river five times to a poplar, thence south fifty-five degrees east four thousand poles to a gum, thence N. 35 E. 7890
389 poles to a sugar tree, corner to said Banks, thence with three of said Banks' lines, S. 66 W. 1700 poles to a sugar, thence N. 24 W. 800 poles to a red oak, a corner to Holmes, Gale and Harness' land, and with two of their lines S. 4 W. 224 poles to a red-oak stump on the bank of Gauley, N. 60 W. 100 poles, crossing at the mouth of a large run at 40 poles from the beginning, to the beginning, containing one hundred thousand acres, as appeared by the report of surveyor of lands for Webster county, and the said tract of one hundred thousand acres being the same tract of land that was surveyed for William McClary on the 23rd day of April, 1795, in the county of Randolph, Virginia, (now Webster county, West Va.,) and adjoins the lands of Holmes, Gale and Harness. Second: Beginning at a locust tree, a corner to lands of George Messingbird, running thence 57 E. 4020 poles to a white oak, thence W. 48 E. 1235 poles to Drenning's house, thence N. 18 E. 2170 poles to a sugar standing on the top of the Alleghany mountain, thence N. 60 E. 1600 poles to a pine tree, thence N. 53 west 5600 poles to a white oak, thence S. 23 W. 5100 poles to the beginning, it being the same tract of land that was surveyed for James Welch on the first day of June, in the year A. D. 1795, then in Randolph county, Virginia, (now Webster county, West Va.,) and adjoins the lands of George Messingbird and others, containing one hundred and five thousand acres (105,000) as appeared by the report of the surveyor of lands for Webster county; and the said tract of 105,000 acres as aforesaid was purchased on the 24th day of September, 1869; the said Albert Owen assigned his entire interest in said purchase to Benjamin Rich, and on the 28th day of Sept., 1870, the said Benjamin Rich assigned and conveyed one undivided half of — to Thornton Conrow. Third: Beginning at a sugar tree, thence north 108 poles to a beech, N. 58 W. 1120 poles to a stake standing on the bank of Gauley river, thence west 185 poles to a beech S. 67 W. 790
390 poles to a cucumber near the mouth of said Turtle or Turkey creek, thence S. 80 W. 710 poles to a sugar, S. 26 2810 poles to a locust, corner to James Welch's 105,000-acre tract, thence N. 64 E. 1945 poles to the beginning, it being the same land that was surveyed for George Messingbird on the 10th day of May, 1795, then in the county of Randolph, Virginia, (now the county of Webster, West Virginia,) lying on the waters of Gauley river at the mouth of Turtle or Turkey creek, and adjoins the lands of James Welch and others, containing twelve thousand and five hundred acres, as appeared by the report of the surveyor of lands for Webster county, and the said Albert Owens, G. P. Shreeve and B. Rich, the purchasers of the said tract of land 12500*0* acres, who assigned their right to said purchase by various assignments duly acknowledged to Benjamin Rich and Thornton Conrow, as shown by the purchaser's certificates attached to the said surveyor's report the

deeds to the said Rich and Conrow for the above-described three tracts of land being duly recorded in the recorder's office in Webster county, State of West Virginia, in Deed Book No. 1, page- 385 to 397, as will more fully and at large appear, together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging, or in anywise appertaining, and the reversion, or reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both at law and equity, of the said party of the first part of, in and to the said premises, with the appurtenances. To have and to hold the said premises with all and singular the appurtenances unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behalf of the said party of the second part, his heirs and assigns forever, for the uses and trusts as hereinbefore set forth. And the said party of the first part, his heirs, ex-
391 ecutors and administrators, does by these presents convenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they, the said party of the first part, *heirs*, all and singular the hereditaments and premises hereinabove described and granted or mentioned, and intended so to be, with the appurtenances unto the said party of the second part, his heirs and assigns against them the *second* party of the second part, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part thereof, shall and will warrant and forever defend.

In witness whereof the said parties of the first part to these presents have hereto set their hands and seals, dated the day and year first above written.

FERDINAND F. SHARP, [SEAL]
LYDIA H. SHARP, [SEAL]

Signed, sealed and delivered in presence of—
FRANK B. GARSED,
H. E. HINDMARSH.

E. Hindmarsh.

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss:*

I, Henry E. Hindmarsh, a commissioner appointed by the governor of the State of West Virginia for the said State of Pennsylvania, do certify — Ferdinand F. Sharp and Lydia H., his wife, whose names are signed to the writing hereto annexed, bearing date on the 15th day of May, in the year of our Lord one thousand eight hundred and seventy-two, have this day acknowledged the same before me in my said State, city, and county; and I further certify that said Lydia H., the wife of the said Ferdinand F. Sharp, whose names are signed — hereto annexed, bearing date on the fifteenth day of May, in the year aforesaid, one thousand eight hundred and seventy-two,

personally appeared before me in the State, city, and county aforesaid, and, being by me examined privily and apart from her
392 husband and having the said writing fully explained to her, she, the said Lydia H., acknowledged the said writing to be her act and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and official seal this seventeenth day of May, 1872.

[COM'R SEAL.] H. E. HINDMARSH,
A Commissioner for West Virginia in Pennsylvania, Residing in the City of Philadelphia.

STATE OF WEST VIRGINIA, }
Webster County. }

RECORDER'S OFFICE, *June 6th*, 1872.

This deed was this day presented in this office for record, and it, being duly certified, therefor- is thereupon admitted.

JAMES WOODZELL,
Recorder, W. C.

EXHIBIT "V," FILED WITH PLAINTIFFS' 2ND AMENDED AND SUPPLEMENTAL BILL.

G. M. Sawyers, Clerk, to Benjamin Rich and Others. } Deed for 65,734 Acres of Land.

This deed made this 30th day of October, 1876, by George M. Sawyers, clerk of the county court of Webster county, in the State of West Virginia, of the first part, and Benjamin Rich, Thornton Conrow and Walter Wood, of the second part: Whereas, in pursuance of the statute in such case made and provided; Samuel Given, sheriff of the said county, did, on the 5th day of October, 1875, that being the first day of the term of the county court of said county in that year, commence to expose to public sale at the door of the court-house of the said county, between the hours of ten in
393 the morning and four in the afternoon, the real estate heretofore returned delinquent for the non-payment of the taxes due thereon in the said county of Webster, and whereas, at the sale so made as aforesaid on the 5th day of October, 1875, the said Benjamin Rich, who became the purchaser of a tract of 65,734 acres of land, who has assigned the benefit of one-third interest to Thornton Conrow, and also assigned the benefit of one undivided one-third interest to Walter Wood, as appears by the paper hereto annexed, became the purchaser of a tract of land of 65,734 acres of land situate in the said county, which formerly belonged to and was returned delinquent in the name of Francis Hyland, for the year 1874, for the sum of $143.34, that being the amount of taxes, interest, damages and commission due thereon at the time of said sale, including fee for receipt; and whereas, more than one year

has elapsed since the date of the said sale, and the real estate not having been redeemed as provided for by law, and whereas, after the expiration of the said one year, to wit: on the 23rd day of October, 1876, the said Benjamin Rich, Thornton Conrow and Walter Wood, in the manner prescribed by law, caused a report to be made to the clerk of county court of the said county specifying the metes and bounds of the said tract of land so purchased as aforesaid, and being such description thereof as is sufficient to identify the same, and there being no valid objection to said report, the same was on the 30th day of October, 1876, ordered by the said clerk to be recorded in his office, and a record thereof has been made accordingly, to which record now remaining in the office of clerk of the county court of the said county of Webster, reference is here had.

Now, therefore, this indenture witnesseth: That for and in consideration of the premises, the party of the first part has bargained and sold, and by these presents doth grant, bargain, sell and convey unto the parties of the second part, his heirs and assigns
394 forever, the real estate aforesaid, situate in the county aforesaid, on Gauley and Williams river, and bounded as follows, to wit: Beginning at a locust, said Messingbird's corner, and running S. 57 E. 4220 poles to a white oak; thence N. 48° E. 1235 poles to Drimmon's house; thence N. 18° E. 2170 poles to a sugar on top of Alleghany mountain; thence N. 61° E. 1600 poles to a pine; thence N. 53° W. 5600 poles to a white oak; thence S. 23° W. 5160 poles to the place of beginning, containing 65,734 acres in said survey, after deducting 8,666 acres of prior claims. To have and to hold the said real estate, with its premises and appurtenances unto the said Benjamin Rich, Thornton Conrow and Walter Wood, their heirs and assigns forever.

Witness the following signature and seal.

G. M. SAWYER, [SEAL.]
Clerk of the County Court of Webster County, West Va.

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Walter Hollister, a notary public in and for the county and State aforesaid, do hereby certify that George M. Sawyer, clerk of the county court of said county, whose name is signed to the foregoing deed, bearing date on the 30th day of October, 1876, has this day acknowledged the same before me in my said county.

Given under my hand this 30th day of October, 1876.

WALTER HOLLISTER, *N. P.*

WEBSTER COUNTY COURT,
CLERK'S OFFICE, *October 31st,* 1876.

This deed, with the certificate of acknowledgment to it annexed, was this day admitted to record in this office.

Teste: G. M. SAWYERS, *Clerk.*

395 And on another day, to wit, on the 7th day of February, 1885, the following order was made and entered of record, to wit:

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others. } In Chancery.

B. M. Yeager, the special surveyor appointed herein, having at this time returned and filed his report of survey in this cause in answer to the rule awarded against him herein, on motion of the plaintiffs and for reasons appearing to the court, it is ordered that said report be recommitted to said surveyor, with instructions to return three additional plats showing more plainly—

1st. The lines of the Robert Morris patent of 153,900 acres;

2nd. The lines of the McClary tract of 100,000 acres;

3rd. The lines of the 77,104 acres, part of the 153,900 acres, conveyed by Williams to A. T. Caperton;

4th. The lines of the Messingbird survey of 12,500 acres;

5th. The lines of James Welch survey of 105,000 acres; and

6th. The lines and location of all the lands claimed by the plaintiffs in this suit, indicating thereon by colors as well as lines, and that he return said plats to this court on or before the 20th day of March next.

The report referred to in the foregoing order is in words and figures as follows, to wit:

396 Pursuant to an order made by the circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 8th day of August, A. D. 1883, in the case of Tamlin Braxton *et al. vs.* Benjamin Rich *et al.*, appointing me a special surveyor in this cause to do and perform such surveying therein as either party may require, after having given notice to the parties that I would proceed on the 24th day of September, 1883, from the town of Addison, in the county of Webster, West Virginia, to execute the order of survey made in said cause by said court, which order and notice are herewith filed, marked A and B respectively, I proceeded to the said town of Addison on the day named in said notice, where I met B. W. Byrne, one of the counsel for the plaintiffs in this cause, there being no one present to represent the defendants in said cause, and on the next day I commenced to execute the said order of survey. At the request of said B. W. Byrne I commenced surveying at a point in the said town of Addison shown to me by said Byrne and the

397 residents of the neighborhood as the place where a hickory tree formerly stood, which tree is called for in a grant from the Commonwealth of Virginia to John Holmes, George Gales, and George Harness for 100,000 acres, granted on the 10th day of June, 1796, which tree is described in said grant as standing 30 or 40 poles from Fork lick. From this point I ran S. 88 W. 44 p's to said lick, which is situated in and near the forks of Elk river. Thence from the place of beginning, which is marked with the letter A on the

map which accompanies this report, I ran with the calls of the grant to the said Holmes, Gale, and Harness, allowing 3° variation, S. 47 E. 280 p's up Elk river to B. There is no corner tree called for at this point in said grant. From this point I ran S. 67 E. 360 p's to C. A white oak is called for at this point, which I could not find. From this point I ran N. 88 E. 280 p's to D, a chestnut, the beginning corner of the said grant to Holmes, Gale, and Harness, and described in said grant as being a corner to Henry Banks. This tree is standing on a hillside on the south side of Elk river, 62 poles from said river by a line bearing S. 69 W., and is marked to suit the calls of said grant to Holmes, Gale, and Harness; also marked to suit the calls of a grant from the Commonwealth of Virginia to Marcus Eliam, assignee of Samuel McCraw, assignee of James Hines,
398 who was assignee of Henry Banks, granted on the 16th day of April, 1791, for 1,000 acres, and designated on the map as No. 6 in a draft of surveys made for Henry Banks on the 5th day of July, 1787, and to suit the calls of a grant from the Commonwealth of Virginia for 1,500 acres to Wm. G. Payne, assignee of Henry Banks, granted on the 17th day of November, 1802, which is designated on the map as No. 4; the marks on said tree appear to have been made with a pocket-knife and do not extend through the bark; there are also some old blazes on this tree which do not extend through the bark; there is also a beech standing at this place which is marked plainly with an axe on the sides bearing N. 24 W. and S. 24 E., which marks appear to be 30 or 40 years old. From this point I ran with the first call in said grant to Holmes, Gale, and Harness, allo-ing 3° variation, S. 69 W. 1,200 p's to *ee*. A red oak is called for at this point which I could not find. I then ran with the next call in said grant S. 7 W. 174 p's to *ff*, on the bank of Gauly river, where a black oak is called for which I could not find. I then began at G, a birch stump standing on the south bank of Sand run, a branch running into Gauly river about 3 miles from Fork lick, 48 p's from the mouth of said run, and reversing the *the* calls
399 of said grant I ran S. 37 E. 116 p's to F, where the black oak is called for on bank of Gauley river, which point is 4 poles below a chestnut, lynn, ash, and birch, which have been recently marked. From this point I reversed the preceeding call in said grant and ran N. 7 E. 234 p's to E, which point was shown to me by Bernard Mallohan, surveyor of lands for Webster county, as being where a red oak formerly stood and described as the beginning corner in a report made by him on the — day of —— 18—, to the recorder of Webster county for the benefit of Benjamin Rich, of a survey of 58,500 acres surveyed for Henry Banks in the year 1787. I found several line trees on this line marked to suit the calls of the said grant to Holmes, Gale, and Harness, which marks are very old. I found a variation of 3° and the line 10 p's longer than called for. I also find from calculations that the course and distance from D to E is S. 73 W. 1,240 p's. This red-oak corner is also called for in a grant from the Commonwealth of Virginia to Wm. McClary for 100,000 acres granted on the 21st day of January, 1796. I then began at G and ran with the call of the said grant to Holmes, Gale, and

Harness, allowing 3° variation, S. 38 W., crossing Gauly river three times 774 p's to S, a point on the old county line formerly dividing the counties of Greenbrier and Harrison. I then began at
400 H, a chestnut in the edge of laurel, shown to me by Samuel Given as a corner to a survey of 153,900 acres granted by the Commonwealth of Virginia to Robert Morris, assignee of Hudson Martin, granted on the 25th of March, 1795, and from this point I ran with the calls of said grant, allowing 3° variation, N. 58 E. 30 p's, crossing Upper Glade run, near below the falls in same, to I. A maple is called for at this point, which I could not find. I then run with the next call N. 22 W. 110 p's to J. Two white oaks are called for at this point, which I could not find. I then ran with the next call N. 27 E. 460 p's to a point on the said old county line 30 p's east of a poplar standing on said line at K, which tree is claimed by the plaintiffs as one of the two poplars called for in said grant and described in said grant as standing on said county line. This tree is marked plainly with three marks on the side bearing S. 25 W. and on the side bearing N. 55 W. I blocked one of the marks on the side bearing S. 25 W., which block is herewith filed and marked B. M. Y. This tree is also marked on the side bearing S. 55 E., which marks appear to have been made more recently.
From this point I ran with the next call in said grant, which
401 calls to run with the said old county line, S. 52¾ E. Crossing Gauly river at 500 p's, I intersected the line of the said Holmes, Gale, and Harness grant at 510 p's. I found sugar and chestnut marked as a corner at 890 p's, R. I crossed Williams river at 2,760 p's, in all 2,900 p's, to L, a birch and 2 spruce pines and pointers on the side of the mountains between the forks of W'ms river, which is the begin-ing corner of a survey of 9,330 acres granted to Austin Hollister on the 1st day of November, 1855. I blocked some line trees on the last line run, which appeared to be about 40 or 42 years old. From this point I ran with the closing line in the said grant to Robert Morris, allowing 3° variation, S. 3 W., crossing the middle fork of W'ms river, Cranberry and Cherry rivers, 5,150 p's to M, a large white-oak log and sugar stump in the edge of a bottom on the Dry fork of Spring creek, in the county of Greenbrier, which is the beginning corner of said Robert Morris grant and described in said grant as being a corner to Adam Eghole. This point was shown to me by Joseph McMillion (who now owns the said Eghole land) as being his corner. There is
also a maple marked at this point, which I blocked
402 and ascertained the marks to be about 36 years old. From this point I ran S. 6 E. 38 p's to N, crossing a branch, to a large locust stump, which is very much decayed and does not show any marks; which stump is claimed by said McMillion as his corner. There are 10° variation on this line and 2 p's longer than called for in the grant. From this point I ran S. 20 W. 32 p's to O, a large poplar, which shows indications of old marks, but I am not positive that they are axe marks. It has also been marked recently. There are 5° variation on this line and 2 p's longer than called for in the grant; which tree is also claimed by said McMillion as his

corner. I then ran S. 12 E. 82 p's to P. At this place a hickory and walnut are called for in the grant, which I could not find. This point was shown to me by said McMillion as being the point where the hickory and walnut corner of his land formerly stood. There are 4° variation on this line and 12 p's shorter than called for in the grant. From this point I ran south 122 p's to Q, a sugar stump and 2 sugar trees standing on a point near above a small branch,
403 which trees are claimed by said McMillion as his corner. There are 6° variation on this line and 4 p's shorter than called for in the grant. These trees are plainly marked on four sides. At this point the grant calls for three sugar trees, corner to said Eghole and also corner to George Clendennen and John Beckley. I blocked one of the marks which suited the calls of said Eghole land, and which block is marked M and herewith filed. I also blocked one of the marks which suited the calls of said Clendennen and Beckley, which block is marked B and herewith filed.

Oct. 26th, 1883.—By request of Edward R. Wood, one of the defendants in this cause, I began at F, where the black oak is called for in the said grant to Holmes, Gale, and Harness on the bank of Gauly river and by the call of the survey upon which said grant issued I ran N. 57 W., crossing Sand run (8 p's above its mouth) at 76 p's, in all 116 p's, *bb*, a stone and 4 small birch saplings, which have been recently marked, standing on a small ridge. I allowed 3° variation on this line. This point is claimed by the defendant as being where a birch tree formerly stood and described in a survey made on the 23rd day of April, 1795, for Wm. McCleary for
404 100,000 acres, and upon which survey a grant issued to Wm. McCleary on 21st day January, 1796, for the same as being situated or standing on a small rise about 40 poles from the mouth of a large run that puts into Gauley river about 2¾ miles from Fork lick, and also described in said survey as being a corner to said Holmes, Gale, and Harness. From this point I ran with the call of the said grant to Holmes, Gale, and Harness, allowing 3° variation, S. 38 W., crossing Gauley river five times, 1,340 poles to the north bank of Williams river, which point is marked by the figure 3 on the map, which was all that was required by the defendant.

Nov. 5th, 1883.—By request of the plaintiffs I began at E, where a red oak is called for, and ran by the calls of said report made by Bernerd Mollohan, allowing 3° variation, S. 21 E. 800 p's, crossing Gauley river, to F F. A red oak is called for at this point, which I could not find. There is red-oak timber near this point. I then ran with the next call S. 66 E. 900 p's to figure 4, on Turkey creek. I then ran down Turkey creek N. 75 E. 80 p's to the forks of the same, N. 12 E. 360 p's, N. 5 E. 106 p's to the mouth of said creek.

May 7th, 1884.—By request of the plaintiffs I began at R,
405 a sugar and chestnut on the said old county line, which point is claimed by the plaintiffs as being where a post is called for in a grant from the Commonwealth of Virginia to Abner Cloud on the 10th day of March, 1790; said trees are marked on four sides, which marks appear to be about 40 years old. From this poin I

ran the last call in said grant, allowing 3° variation, N. 38 E. 800 p's to 11. A sugar and elkwood are called for at this point which I could not find. I then ran with the first call in said grant, allowing 3° variation, S. 52 E., crossing Gauley river twice, 1,000 poles to 22, at which point a sugar is called for, which I could not find. The distance gave out on top of a ridge. This point is also claimed by the plaintiffs as being a corner to a survey of 500 acres granted to Austen Hollister on the 3rd day of March, 1849, and also a corner of a survey of 9,330 acres granted to said Hollister on the 1st day of November, 1855, which corner is described in said last-named grant as standing on a ridge. I then ran with the calls of said grant of 9,330 acres, reversed, N. 39 E., crossing Turkey creek at 355 p's, in all 500 poles, to 33, a birch standing on the south bank of Gauley river, which tree is marked to suit the calls of said
406 survey. There — 4° variation on this line and distance same as called for. I found old line trees on this line. From this point I ran N. 83 E, crossing Gauley river, 420 p's to 44, a white-oak stump, shown to me by David Baughman as being the point where a white oak, beech, and lynn formerly stood, a corner of the Wm. T. Hamrick land, now owned by said Baughman. There are 3° variation on this line and 10 p's shorter than called for. I then ran S. 53 E., crossing Gauley river at 120 p's, 225 p's, following a marked line, to 55. At this point a stake is called for in said grant. There are 2° variation on this line; distance same as called for. This point is also claimed by the plaintiff as being on a line of a survey of 2,738 acres, granted to Douglas B. Layne and Alexander C. Layne on the 1st day of September, 1857. I then ran S. 2 W. 145 p's to 66, two sugars by a cliff of rocks, which trees are marked to suit the calls of said last-named grant. There are 2° variation on this line and 5 p's shorter than called for. I then ran S. 39 E. 240 p's to 77, a maple on a ridge, which tree is marked to suit the calls of the last-named grant. There is 1° variation and 8 p's longer than called for. I then ran
407 N. 46 E. 80 p's to 88, a beech and maple marked to suit the calls of said last-named grant. There is 1° variation on this line; distance same as called for. I then ran S. 1 W. 86 p's to 99, two birches marked to suit the calls of the said last-named grant. At this point two birches and beech are called for. There is 1° variation on this line; distance same as called for. I then ran S. 39 E. 28 p's to 10.10. At this point I found a spruce pine marked with three hacks on the side, bearing S. 35 W. There is 1° variation on this line; distance same as called for. From this point I ran with the first call (reversed) of said grant of 9,330 acres S. 38 W., following a marked line, passing 4 beeches marked as corner trees at 610 p's. I crossed Williams river at 1,174 p's—in all, 1,422 p's—to L, a birch and two spruce pines on the said old county line, which trees are marked to suit the calls of said grant. There are 3° variation on this line and 2 p's shorter than called for. I then began at the figure 3 on the north bank of Williams river and continued the line of the said grant to Wm. McCleary S. 38 W. 1,750 p's to X. I

then ran N. 52 W. 108 p's to Wm. Belcher's house, which was
408 all that was required by the plaintiffs; all of which measurements were made by surface measure. From all the papers in my possession it appears that 68,953 acres of the land now claimed by the plaintiffs are covered by the various claims of the defendants, and 23,987 acres which were conveyed by A. T. Caperton in his lifetime are also covered by said defendants' claims.

Explanation.

The lands represented by the red letters K L S Y and following the red lines back to K are claimed by the plaintiffs under
77,104 a deed made by John Williams and wife to A. T. Caperton on the 20th day of February, 1850, for 77,104 acres.

The lands included in the red lines and numbered from 1 to 10 and the tract containing respectively 693 acres, 1,703 acres, and 440 acres, all adjoining each other, and the tract containing 5,000 acres, lying on and north of the old Harrison county line, are claimed by the plaintiffs under a deed made by John Williams and wife to A. T. Caperton on the 21st day of February, 1850.

9,330 The land included in the red lines containing re-
409 5,938 spectively 9,330 acres, 5,938 acres, and 350 acres, lying
350 on and north of the old Harrison county line, are claimed by the plaintiffs under a deed made by Austin Hollister and wife to A. T. Caperton on the 12th day of February, 1859.

The tract included in the red lines marked 2,738 acres is
2,738 claimed by the plaintiffs under a deed made by D. B. Layne and wife to A. T. Caperton on the 12th day of April, 1859.

The tract lying inside of the 77,104 acres and shaded
11,459 yellow and marked 11,459 acres is part of the land conveyed by Wm. H. Macfarland and wife and A. T. Caperton and wife to the Chesapeake and Ohio Railroad Company on the 11th day of October, 1869.

The boundary lying south of Cranberry river shaded in
23,987 blue and marked 23,987 represent- the lands conveyed by A. T. Caperton in his lifetime to various parties.

The reservations mentioned in the deed from John Williams and wife to A. T. Caperton for the 77,104 acres —
Reservations. are represented by the blue lines and numbered from 1 to 16, respectively.

410 The boundary represented by the purple lines and marked A A, B B, C C, D D, E E, F F, T T, and S S is the bound-
100,000 ary of the survey of 100,000 acres granted to Wm. McCleary on the 21st day of January, 1796, as claimed by the plaintiffs.

And the boundary represented by the dotted lines and
100,000 marked by the letters F, *b b*, *t t*, *s s*, to D D, E E, F F, and T T is the boundary of the said survey granted to Wm. McCleary, as claimed by the defendant.

The purple lines marked T T, F F, E E, L L, O O, P P, and N

N represents a survey made for Henry Banks in the year
58,500 1787 of 58,500 acres in lots or surveys from 1 to 53, as shown in the map.

The green lines marked by the figures 1, 2, 3, 4, 5, 6, 7
12,500 represent a survey of 12,500 acres made for George Messingbird on the 11th day of May, 1795, and the green lines
105,000 marked with the figures 1, 8, 11, and 12 represents part of a survey of 105,000 acres made for James Welch on the 1st day of June, 1795.

The two last-named surveys were laid down by protraction by request of the plaintiffs.

411

Plaintiffs' costs	$486 65
Defendants' "	29 15
Amount paid by pl'ffs	165 25
" " by def'ts	29 15

Traveller's Repose, W. Va., December 1st, 1884.

B. M. YEAGER.

(Here follows map marked p. 412.)

413 And on another day, to wit, on the 6th day of February, 1885, the following affidavit was filed in open court:

STATE AND DISTRICT OF WEST VIRGINIA, *County of Wood,* } *To wit:*

TAMLIN BRAXTON *et al.* *vs.* BENJAMIN RICH *et al.* } In Chancery.

James H. Ferguson, being first duly sworn, deposes and says that he is one of the counsel of the plaintiffs in the above-entitled suit and has been such counsel since the spring of 1883; that said suit was brought in the circuit court of the county of Webster, as appears by the record therein filed in this court on the 8th day of August, 1881, and was ordered to be removed into this court on the 3rd day of April, 1882, on motion of a portion of the defendants therein, and the record thereof was filed by the said defendants in this court on the 9th day of June, 1882, as appears by the clerk's endorsement on said record.

That the resident defendants appear to have been served with process in the suit, and as to the non-resident defendants, and, among them, the defendant Benjamin Rich, an order of publication appears to have been entered at the October rules, 1881. None of the non-resident defendants who have claimed to be the owners of the land in controversy appeared in the State court, so far as affiant has been able to learn from the record, and the first of them who appeared and — an answer herein, so far as affiant can ascertain, was the said Rich, who filed his answer to the original bill, as appears by the endorsement of the clerk thereon, on the 6th day

of December, 1882, about six months after the filing of said record in this court, and none of the other claimants of said lands have ever yet filed their answer in this suit, so far as affiant has been able to learn from the papers in the cause or otherwise.

414 That shortly after his said employment affiant, upon examination of the bill in the case, found that the evidence of the plaintiffs' title to the lands in question in the suit was not filed therewith, and, the object of the suit being to remove a cloud upon their title to said lands created by another alleged title set up by the defendant Rich and others, he deemed it necessary, for that reason and otherwise, to prepare and file an amended and supplemental bill, which he at once proceeded to do; and he filed the said bill, with the necessary exhibits showing a perfect chain of title in the plaintiffs to said lands, on the 3d day of April, 1883, as appears by the endorsement of the clerk thereon; that process was promptly issued on said bill and, as he is informed and believes, an order of publication was entered against the absent defendants, Rich and others, and duly posted and published as soon as it could be done after the filing of said bill.

That at the summer term of this court, 1883, August 8th, Caleb Boggess, Esq., a practicing attorney, appeared for the defendants in this suit and consented to an order of survey herein, and, "on his motion," leave was given the said defendants to file their answer to said amended bill within 20 days from that date, as appears by the decree entered in this cause at said term, but that none of the defendants herein filed their answer within the said 20 days, as he is informed and believes; and, as he is further informed and believes, none of the defendants, except the said Rich, claim to have filed their answer to said bill at any time.

That it is claimed by the said attorney of the said defendants that some time after the expiration of the said 20 days, but this affiant does not know when, the said Rich filed his answer to said bill, which, if true, the records of the court will probably show, but when affiant first came to the present term of this court he examined the papers in this suit and no such answer could be found therein.

415 And affiant further says that by the terms of his employment in this suit he was to take charge of the pleadings and proceedings therein in court and not to attend to anything out of court, and he was informed that Col. B. W. Byrne would attend to the taking of the depositions and the execution of the order of survey therein and such other things as were necessary to be done, and thus get the case ready for a hearing, and that as soon after the making of said order of survey as he reasonably could Col. Byrne proceeded to the execution of his part of the work without waiting for the answers of the said defendants to be filed to the said amended bill; and this *defiant*, notwithstanding his said contract, in order, if possible, to get this case ready for trial, went, during the last year, but the exact date he does not remember, to Washington and to Bellefonte, in the State of Pennsylvania, and took depositions for the plaintiffs herein; that the execution of the

order of survey was a tedious and troublesome undertaking and was not completed until late in the year 1884, and the surveyor had not returned his reports and plats thereof at the commencement of the present term of this court, and now that they are returned they fail to show in an intelligible way the boundaries of the Robert Morris tract, under which the plaintiffs claim, and the said McCreery (or McClary) tract, under which the defendants claim, with reference to each other (the Morris patent being the older of the two), and the location of the lands of the said plaintiffs with reference to the lands of the defendants, which constitute the cloud upon the title of the plaintiffs in this suit.

And affiant therefore deems it necessary to recommit said reports and plats to said surveyor to have these defects corrected; that affiant upon his said first arrival at this term of court learned that Col. Byrne had obtained from the clerk of this court nearly the
416 whole of the title papers of the plaintiffs filed with said amended bill for the purpose, as he alleged, of using them in making said survey, and that none of them had been returned, and he at once examined a parcel of papers delivered to him by Col. Buttrick, of Charleston, which, however, did not belong to the papers in court, but were procured for the private use of counsel, except that he found in them three of the papers for which the clerk had the receipt of Col. Byrne, which he returned to the clerk, and the balance of said papers, 12 in number, for which the clerk has the receipt of Col. Byrne, have not been as yet returned; and the plaintiffs cannot proceed to the trial of this cause without said papers or substituted copies of them, one or the other of which affiant will take measures to procure and file at the earliest possible moment, but he cannot do so in ten days from this time, as is asked for by the counsel of the defendants.

That within a few days past the whole management of this case, in and out of court, has been given to affiant and he has accepted such management, and in pursuance thereof affiant will proceed with all possible, and at the same time reasonable, dispatch to prepare the case for a speedy hearing and trial.

But having within a short time past learned definitely for the first time that two of the tracts of land claimed by the defendants in this suit purchased by them at the tax sale mentioned in the bill and amended bill in this case and not named in either of said bills, as well as the tracts which are therein named, also constitute a cloud upon the title of the said plaintiffs to the lands in question in this suit, *and* therefore it is necessary to file a further amended bill in this cause, which bill affiant is now preparing with all possible speed. Affiant has also lately made other important discoveries and learned other important facts not previously known to him or the plaintiffs which render it absolutely necessary to file said further
417 amended bill; and it is also necessary to file said bill in order to correct a name used in both the original and first amended — by mistake, and for lack of knowledge of the true name, to wit, to substitute the name of John B. Shreve for G. P. Shreeve in sundry

places therein; and affiant expects to have said bill ready to file some time during this day.

And affiant further says that it is necessary, as he finds from the report of said surveyor, to take the depositions of said surveyor and of sundry other witnesses whose names are given in said report, of whose materiality he had previously no knowledge whatever, and he feels certain that none of the plaintiffs had or now have any knowledge thereof, as all of them live remote from the residence of said witnesses and from this court, and necessarily depend upon their counsel to find and take the evidence necessary to prepare this case for trial. It is also necessary, in order to get the case ready for trial, for the plaintiffs to procure and file the evidence of the forfeiture of the lands claimed by the defendants in this suit to the State of Virginia prior to the formation of this State, which evidence affiant directed Col. Byrne to procure during the last year, and affiant only learned from Col. Byrne a short time since that for some reason beyond his control he failed to do so.

(Signed) JAMES H. FERGUSON.

Taken, sworn to, and subscribed before me this 6th day of Feb., 1885.

(Signed) L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

418 And on another day, to wit, on the 14th day of February, 1885, the following order was made and entered of record, to wit:

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others. } In Equity.

This day came the plaintiffs, by James H. Ferguson, their counsel, and the defendants Benjamin Rich, Richard Wood, Walter Wood, and Edward R. Wood, by Caleb Boggess, their counsel, and on motion of the defendants to set aside and vacate the order heretofore made in this cause on a former day of this term, permitting the plaintiff to file an amended bill, the court, having considered the same, doth overrule it; but the court is of opinion and doth order that the same be so modified as to require that the said plaintiffs do pay all the costs occasioned by the said amendment, and that they be required to furnish the said defendant- or their said counsel for them a copy of the said bill and the exhibits filed therewith against the 20th day of March next; and it is further ordered that the said complainants do speed their said cause and complete the proof therein against the first day of May next. Process against the defendants Andrew Wayne, Thomas Myers, Jesse Hammons, and Adonijah Cogar, it is agreed, need not be served. An order of publication is awarded

against the defendant- Ferdinand F. Sharp and D. S. Robinson, non-residents of this State.

And on another day, to wit, on the 17th day of December, 1885, the following certificate was filed in the clerk's office of said court:

STATE OF WEST VIRGINIA:

AUDITOR'S OFFICE, CHARLESTON.

I, Patrick F. Duffy, auditor of the State of West Virginia, hereby certify that I have carefully examined the land books on file in my office in which lands are charged for taxation, and I find that a tract of land of 58,500 acres — charged and entered in the name
419 of Benjamin Rich for the taxes thereon for the years 1875, 1876, 1877, 1878, described as lying in Fort Lick district, in the county of Webster, and that it appears from the records in my office that said tract of land was returned delinquent for the non-payment of taxes for each of the years 1875, 1876, 1877, 1878, and that in the year 1879 the auditor certified the said tract of 58,500 acres of land charged to Benjamin Rich, in Fork Lick district, to the sheriff of said county, to be sold for the delinquent taxes of the years 1875, 1876, 1877, 1878; and at a sale for taxes in said county, made by the said sheriff on the 25th day of November, 1879, said tract of 58,500 acres, charged and delinquent in the name and for the years aforesaid, was offered for sale by said sheriff, and, there being no bidders, it was bought in for the State on that day.

On the 26th day of November, 1880, B. Rich, by R. D. Wood and Company, paid into the State treasury $1,195.59 and the auditor's fee for the redemption of said — from the State for said years 1875, 1876, 1877, 1878, and also for 1879, and obtained a certificate of redemption, and which certificate is in the words following, to wit:

Certificate of Redemption of Lands.

No. 499.

STATE OF WEST VIRGINIA,
AUDITOR'S OFFICE, WHEELING, *Nov.* 26, 1880.

Name of person charged with taxes.	Quantity of land ch'g'd.	Local description of land.	For what taxes returned delinquent and sold.		
			Year.	Taxes.	Interest.
B. Rich	58,500	Elk river, Fork Lick district, Webster county.	1875 & '76.		
			State	72 34	8 80
			County	120 47	14 42
			District	323 46	38 82
			1877.		
			State	35 83	4 30
			County	66 59	8 00
			District	127 63	15 32
420			1878.		
			State	31 55	3 80
			County	68 33	7 60
			District	62 91	19 55
			1879.		
			State	26 33	1 32
			County	52 66	2 70
			District	78 96	3 90
			Total	1,067 06	128 53

Recapitulation.

Total of taxes, damages, and interest for which sold	909 11
Total of taxes for which returned delinquent	157 95
Total interest since accrued	128 53
Office fee	2 00
Total cost of redemption	$1,197 59

This certifies that Mr. B. Rich, by R. D. Wood & Co., by payment into the State treasury of eleven hundred ninety-five $\frac{59}{100}$ dollars, evidenced by treasurer's receipt No. 201, has redeemed the land above described, which has been heretofore returned delinquent and sold for non-payment of taxes, as herein set forth.

JOS. S. MILLER, *Auditor.*

[SEAL.] Given under my hand and the seal of my said office this 12th day of December, 1885.

P. F. DUFFY, *Auditor.*

And on another day, to wit, on the 19th day of January, 1889, the following order was made and entered of record, to wit:

TAMLIN BRAXTON, &c.,
vs.
BENJAMIN RICH and Others. } In Equity.

This day came the defendant Benjamin Rich, and, on his motion, he has leave to file his separate answer to the plaintiffs' second and amended and supplemental bill, filed against him and others, which is accordingly done; also came the defendants Walter Wood, Richard Wood, and Edward R. Wood, and, on their motion, have leave to file their joint answer to the plaintiffs' bill and amended bills in this cause, which is accordingly done.

The answer of Benjamin Rich, referred to in the above order, is in words and figures as follows, to wit:

421 To the honorable circuit court of the United States of the district of West Virginia:

The separate answer of Benjamin Rich to a second amended and supplemental bill exhibited against him and others to this honorable court by Tamlin Braxton and others, plaintiffs.

This respondent, without confessing or admitting any part of said bill not herein otherwise specified nor admitting the sufficiency thereof to require further answer thereto, nevertheless to so much and such parts thereof as he is advised is necessary and material for him to make answer unto answereth and saith—

That of his own personal knowledge he cannot say when the said Allen T. Caperton died nor whether he died testate or intestate nor who succeeded him as his heirs or representatives.

This respondent has no personal knowledge of the tract of 153,900 acres referred to as having been granted to Robert Morris either as to its location, whether it interferes with the lands claimed by the defendant and his associates, or what title, if any, the said Allen T. Caperton ever had to these or any part of these lands; that he is advised and believes that the said Allen T. Caperton had never in his lifetime acquired a good title to any part of the Robert Morris land, and is further advised and answers—

That the exhibits filed with the plaintiffs' bill in relation
422 thereto are insufficient evidence of any title so vested in the said Caperton. Respondent, further answering, admits that such part of the Robert Morris survey and such other lands as the said Caperton in his lifetime may from any source have had acquired title had become, as alleged in the bill, forfeited and vested in the State of West Virginia for the non-payment of taxes; and respondent avers—

That if such lands were ever owned by Caperton and afterwards, as admitted by the plaintiffs in bill, became forfeited to and vested in the State of West Virginia — have since so remained in the State, except so far as the same may have been transferred and vested in other persons under the provisions of the constitution of the State of West Virginia, adopted in the year 1872, in article 13, section 3.

That by the provisions of the State constitution the transfer of

the State's title under this section was limited to other persons than the party through whose fault the land became forfeited, whereby there could be no means that Caperton's heirs could obtain the title therein provided for for its transfer, except by sale to the highest bidder under a decree of the proper court.

Your respondent further answers and says that even if the said Allen T. Caperton in his lifetime had acquired the title to any part of the lands claimed by his heirs in the bill that no part of the said land descended to his heirs after his death, because it is admitted by them in their bill that at the time of his death his lands had been forfeited and were vested in the State of West Virginia, and your respondent says that it is not true, as claimed by them, that they have in any way since his death redeemed the said
423 lands and become revested with the title which had passed from their father to the State upon their forfeiture, and that the Exhibits A and B referred to by them in their bill as proceedings whereby they redeemed their lands from forfeiture and became again the owner of them were insufficient to effect such redemption or transfer, for section 4, article 13, of the constitution of the State of West Virginia provides that all lands in this State heretofore or hereafter for any cause forfeited or treated as forfeited to the State of Virginia or this State as purchased by either and become irredeemable—not otherwise disposed of—the title thereto shall so remain in this State until such sale as thereinafter mentioned be made by proceedings in the circuit court of the county in which said lands were situated, be sold and purchased by the highest bidder; that by the proceedings in Exhibits A and B no such jurisdiction was exercised by the State, no such sale was made, and hence the title must remain in the State unaffected by any such proceedings.

The plaintiffs claim to have reacquired the title to these lands by filing their petitions and paying the taxes and damages due since the State had acquired its title by forfeiture at some period anterior to that time.

It is neither claimed by them that these lands were ordered to be sold or sold by any proceeding of the circuit court of any county in which the lands or any part of them lay, as required under this section of the constitution.

There was no statute or other law at that time authorizing
424 a redemption of lands from the State which had once been forfeited and become irredeemable; but Caperton's land, having been sold and purchased by the State for the taxes delinquent and due thereon, may have been redeemed by him in his lifetime or by his heirs or any one having the right to charge them with the debt within twelve months from the time they were so sold and purchased by the State and not thereafter, and from and after that time they had, as by the provisions of the constitution of the State, become irredeemable and were referred to as such a class of lands in section 4, article 13, of that instrument, and from and after that time, as your respondent is advised and believes, there were but two methods or ways by which the State could become divested of this forfeited title, one of which was by a sale of the lands to the highest

bidder; the other in accordance with the provisions of section 3 of the same article of the constitution. Under and by virtue of the last section Caperton, as a defaulting party, and his heirs were excluded from the benefit, and they could have acquired the lands in no other way than in accordance with the provisions of section 4.

Your respondent states as a further and insuperable objection to Caperton or his heirs being enabled in 1881 to have redeemed or otherwise reacquired the title to the lands formerly owned by him that the title thereto, if your respondent in no other way had acquired it, passed to him and those claiming under and through him under and by virtue of the provisions of the 3rd section of article 13 of the constitution because of his actual possession and the
425 payment of taxes as therein required, whereby the State did transfer to him and those claiming under him such title as it had by reason of the forfeiture aforesaid and by reason of such possession and payment of taxes. The title to such lands had actually vested in respondent and others claiming through him and under him by reason of his possession and the payment of taxes thereon.

Respondent excepts to the sufficiency of Exhibits A or B, with the plaintiffs' bill, as evidence to show a redemption by the plaintiffs, and also excepts to them as competent evidence to prove any other fact stated in the exhibits.

Your respondent, further answering the said bill, says that so far as he knew — his own personal knowledge or from information from any source whatever there was not even in existence in 1867 or 1868 a man in West Virginia by the name of John B. Shreve; that prior to the year 1869 he was never in West Virginia and had never seen or heard of said Shreve, nor had he seen or heard nor did he know of any combination, conspiracy, correspondence, or any communications between the said John B. Shreve and the several parties in the bill as fraudulent conspirators to improperly cause lands to be charged on the books of the assessor of Webster and other counties or any of them until long after such lands had been so entered and had been returned delinquent and until they had been advertised for sale; that he never knew or heard or suspected any unfair purpose or object or act by Shreve or any one else in relation to the entry of delinquency and sale of these lands; that his interest in them, as well as his knowledge of all matters relating to them, dated but a very short time before their sale and after
426 their liability for sale had been fixed and determined; that he became the purchaser in his own name of some and as an associate of others in other of the lands, and in all these he was ignorant of and had no reason to suspect that there had been any fraudulent or unfair or illegal act or method employed by the State officers in relation to them; on the contrary, he had supposed that the elected and trusted officers of the State had honestly and faithfully and justly performed all the duties which the law required of them in relation to assessment and collection and sale for the purpose of securing payment — the taxes; in other words, that everything had been done legally and fairly, and that no suggestion to

the contrary had ever reached him until long after he had become the purchaser of the lands; that in relation to these matters, being a non-resident of the State and not familiar with the State laws in relation to the title to delinquent lands, he consulted able lawyers practising in the State as to the kind of title he might expect to obtain as the purchaser of these lands, and he was advised that if lands had been charged with taxes upon the assessor's books in the proper county and they were, in fact, delinquent that at the sale therefor he would acquire all the title, not only of the persons in whose name they were charged and sold, their heirs or devisees or any one else who might prove to be the owner of the lands, but who was in default in having had his lands assessed and having paid the taxes due thereon, and that he acted upon that advice and under that belief, and that he knew of no wrongful or illegal act in placing the said lands on the books in an improper way; that he
427 made no inquiry in relation thereto, nor had any one volunteered to give him information upon the subject, nor was there anything which led him to suspect illegal action or conduct by any one in relation thereto.

It is not true, as alleged in the bill, that your respondent purchased the McClary tract with the said G. P. Shreve or Owens, but he purchased it in his own name and for himself, and that neither the said Albert Owen or G. P. Shreve ever had any interest therein.

It is true that the tract of 58,500 acres, known as the Banks land, was purchased by Owens, Shreve, and himself, jointly. In relation to the tract known as the Messingbird tract, of 12,500 acres, and the Welsh tract, of 105,000 acres, your respondent is not certain in whose names these two tracts were purchased, whether the said G. P. Shreve or Albert Owens were interested in the purchase or to what extent, but believes that one or both of them were so interested as purchasers. Respondent, further answering, says that at the time of the purchase aforesaid he did not know whether any of these lands had ever been granted to any one or forfeited. He confided in the belief that the taxes had been properly charged against these several tracts of land. He perhaps had made inquiry very shortly before the said sale whether there were such tracts of land known to exist, with the view of considering the desirability of owning them; but in relation to the validity of the assessment and sale he had confided in the belief that the officers had performed their duty, and knew
428 nothing or suspected nothing to the contrary; nor did respondent know then, nor does he know now, whether all or any of these tracts of land had become forfeited to the State of Virginia prior to the formation of West Virginia or whether they had become forfeited to the State of West Virginia after her formation; and respondent is advised that it is immaterial to the validity of his title whether these lands were so forfeited or not, so far as the interest and rights of the complainants in this suit are concerned. Since it is immaterial whether the defendant acquired any title or not, inasmuch as the plaintiffs had no title at the time and have acquired no title since, that the object of this suit is to remove a cloud from a good title which is cast upon it by an imperfect or a bad title; so

that as between the plaintiffs and the defendants in this case your respondent is advised that it is immaterial how the fact may be in relation to the validity of his own title to the lands in dispute, inasmuch as the plaintiffs themselves have no title upon which a cloud can rest. He is further advised that as between them in this suit the provision of the statute and law in the State of West Virginia makes the deed as to any question in relation to the sale or the effect of conclusive. Section 29, chapter 31, of the Code of West Virginia provides that the deed in such cases is *prima facie* evidence
429 against the owner of the legal title of certain things recited therein, and that said estate as is recited therein did pass, and as against all other persons than the owners or persons who were authorized to redeem such lands within one year conclusive.

The plaintiffs in this suit do not claim to be the owners of the McClary, of the Banks, of the Messingbird, nor of the Welsh land, and after the sale thereof they would not have been entitled, under section 15 of chapter 31 of the Code of West Virginia, to redeem the said land from the defendants as the purchaser, and therefore everything recited in the deed is as against him, strangers to the land in which the title was claimed, conclusive.

Your respondent, further answering, says that he does not know when or by whom these several tracts of land or either of them were first entered on the books of the assessor of Webster county, whether for the first time in 1868 or before; nor does he know what agency, if any, the said J. B. Shreve had in the entry of the same on the said books, and he is advised that so far as his interest and right to the said lands are concerned that it is immaterial whether the same were entered through the agency or suggestion of the said Shreve or whether he was prompted in his action by an honest or dishonest motive; that your respondent was in no way, directly or indirectly, notified of the fact or benefitted thereby; that it was not his duty to inquire into such matters since he believed and relied solely in his purchase of the said lands upon the propriety of the conduct of the State officers in relation to the assessment and sale thereof,
430 and respondent not only disclaims all knowledge or imputation of having been guilty of any direct or constructive fraud himself in his relations to the land aforesaid, but of any knowledge or belief of anything illegal or fraudulent in the relation of the acts of J. B. Shreve or of any one else in connection with the lands aforesaid, and declares his inability to see or understand how the interest and rights of the said Allen T. Caperton to the lands claimed by him, situated wherever they may be, could be injured or hurt by any such fraudulent conduct as alleged in the bill. If he was the owner of the lands as claimed by him by good and valid title thereto it would have had precisely the same effect upon him whether the lands had been properly, in accordance with the formal requirement of the law, entered upon the books of the assessor, or whether they had been placed there fraudulently by an unauthorized person. If Caperton had paid his taxes his title would have been unaffected, so that if there had been fraud upon the part of Shreve or any one else other than the defendant connected with the entry and assess-

ment of the lands it would, as between the parties to this suit, be an immaterial inquiry.

It is not true, as your respondent is advised and believes, that section 28 of chapter 118 of the acts of the legislature of the State for 1863 were the only laws in force in the State in the year 1868 by which lands could be entered upon the land books of the county, nor does respondent admit that the whole duty of the assessor is prescribed by that section, nor does respondent admit that
431 the assessor neglected or failed in any respect to perform his duty in relation to the lands aforesaid, but calls for full proof of such neglect or failure wherever the same may become material to the inquiries of this cause.

Respondent is unable to state the purpose or motive of the legislature in the passage of the act of 1863 referred to by the plaintiffs in their bill, nor does he believe himself called upon to know the purpose of making the laws of the State or the constitution referred to.

Respondent, further answering, says that in relation to that part of the plaintiffs' bill which refers to the information given by J. B. Shreve to Brockershoff and others, his associates, respondent says that until late in 1869, and but a few days before the sale of the said lands, he never had any communication whatever with the said Shreve on any subject, nor did he know of any notice given by said Shreve to any one else, nor was he aware of any association between said Shreve and others relating to the entry and sale of the said lands in any manner whatever, nor has he any knowledge of what passed between Shreve and others alleged to be his associates nor what passed between them, nor what he or any of them did in relation to such entry and sale; that the whole connection and relationship of respondent with J. B. Shreve, G. P. Shreve, or any of these persons was confined to what has been disclosed by him heretofore in his answer relating to the purchase of these lands. He purchased lands in connection with G. P. Shreve and Albert Owen and Conrow, and *in* this act of purchase and transfer between these constituted his entire relationship to them as connected with this land; that what occurred or what transpired before between
432 themselves or between them and J. B. Shreve, if there had been any dealings or communications between them, were unknown to him.

He was not advised of any agreement between said Shreve and any one else mentioned in the plaintiffs' bill described as an associate with him in any fraudulent design or other purpose, nor does he know anything of their actings and doings or of their objects and purposes other than what he has stated.

Your respondent has no recollection of having noticed the words "taxes paid" written on any part of the advertisement for the sale thereof, and can in relation thereto make no other answer than to say that if such were so written he is ignorant of who did it, when it was done, or for what object it was done or what effect, if any, it had upon any one.

He has no knowledge of any gentlemen from Baltimore who were present at the land sales and who came for the purpose of bid-

ding and who afterwards declined bidding, and cannot therefore affirm or deny upon his own knowledge anything alleged in the bill in relation thereto, but if such allegations are materia requires proof of them from the plaintiffs.

Your respondent, further answering, says that part of the bill which charges that the said Owens, Rich, and G. P. Shreve and their associates and each of them had before and — the time of the sale notice of the objects and purposes, acts and doings, of the said J. B. Shreve and of the said assessor of Webster county therein before stated and charged, and that every and each of them combined, aided, and abetted the said J. B. Shreve and the said assessor
433 in all their fraudulent acts and doings therein before stated from the time they became the respective parties to the said scheme of the said J. B. Shreve, is, so far as it relates to respondent, entirely false, and he believes it to be entirely false so far as it relates to the others; that he was ignorant of any such deed or act alleged against the said J. B. Shreve or against the assessor or against any other person or persons associated with them or either of them. Respondent denies the existence of any such purpose or scheme either of said Shreve or any one else and demands full proof thereof.

Your respondent denies that the entry of said tracts of land on the land books and charging them with the taxes thereon, or that the return of the same as delinquent for the non-payment of taxes thereon, or the purchase thereof at the said tax sale, or the return of said sale, or the survey and reports in relation thereto by the surveyor, or the deeds of conveyance for the several tracts to the purchaser, or either one of them was fraudulent or null or void in law. On the contrary, he claims that they were all valid and are as between him and Caperton and his heirs, who are strangers. Their validity is conclusive.

It is not true that there is any such doctrine as *caveat emptor* applicable to the construction of the sales and deeds referred to, for by the terms of the statute of West Virginia giving effect to such sale and deed, found in the 29th section of chapter 31 of the Code of West Virginia, their effect is made as against Caperton and his heirs, strangers to the proceeding, conclusive.

434 That the defendants were bound to take notice of the laws of the State of West Virginia is admitted by respondent to have been a part of their duty, and, being so bound, they have taken notice of such laws of the State of West Virginia as were material and covering their action in the premises, and he may be excused for suggesting that these laws were equally binding upon the plaintiffs as upon the defendants and as much their duty to take notice of them as that to which they are pleased to call the attention of the respondent. He fears that in their anxiety to point out to him his duty in relation to the laws of West Virginia they have forgotten their own. Notably among them are those requiring the assessment and payment of taxes by the owner and prescribing the effect of a failure to do so, the constitutional provisions which he

has referred to in his answer, and sections 29 and 15 and 25 of chapter 31 of the Code of West Virginia.

Respondent, further answering, says that he is advised that it is not true as a legal rule in West Virginia that a valid title to land therein must have been so in its inception or can never become so. On the contrary, he is advised that many claims which were invalid in law as a legal title might by possession and payment of taxes ripen into and become a good and valid one; that it was within the power of the State of West Virginia by her constitution or by other lawful legislation to give and transfer her own title to persons without title upon such terms and upon such conditions as to her sovereign will was agreeable, and in section 3 of article 13 of the constitution of West Virginia will be found an instance of this
435 exercise of the sovereign power of the people, whereby persons without title but the actual possession and in payment of taxes on lands which were claimed by them became the absolute owners of the legal title which was vested in the State. Hence it is not true that if your respondent did not acquire a title by reason of a deed from the recorder to him for the lands purchased at such tax sale in Webster county in 1870 he could not thereafter have acquired a title, or that other persons claiming under him *and* might not by reason of their claim, accompanied with possession and payment of taxes, have acquired the Commonwealth's title, from whatever source she may have derived it by forfeiture through the neglect of the owner.

436 This respondent, further answering said bill, admits that the McClary tract of land and tract of 58,000 acres known as the Banks tract of land were sold at the time stated in the complainants' bill and were purchased and deeds therefore executed as stated and exhibited with the said bill, and that each of these tracts of land has been held and claimed by the respondent and those to whom he has assigned and transferred the portions of it continuously from the time the title was so acquired by them to the present, and that they have had them regularly assessed and charged with taxes, and that they paid their taxes for each year since then; that for more than ten years prior to 1881 these lands had been in the actual possession of the respondent and his codefendants, claiming title to all of the said lands so purchased for taxes as aforesaid, and had paid the taxes thereon for more than five successive years, whilst, on the other hand, for all these years or for the greater part of them neither plaintiffs nor their ancestor, as respondent is informed and believes, had paid taxes on the lands so claimed by them or any part of them.

Respondent, further answering, says it is true that after the deeds had been executed by the recorder of Webster county for the lands purchased by him and others in 1869 for the delinquent taxes for the year 1868 it was discovered by him or his attention was called to the fact that a deed had been placed on record to one Clifford Viscount de Fleury for what seemed to be the same land which had been charged as 100,000 acres and sold in the name of McClary. It is not true, however, and respondent supposes it to have been well

known to the plaintiffs, that the recordation of this deed was
437 not too late to have caused it to be placed upon the books of the assessor, so that it might be charged with taxes for the year 1870, because the deed had been admitted to record in the year 1869, and by the provisions of the statute law of the State it became the duty of the recorder to include this conveyance to De Fleury in the list of transfers, so that it might be entered on the books for the year 1870.

Respondent further says that he himself had no agency, direct or indirect, in causing the land to be entered on the books of the assesssor in the name of De Fleury nor had he any interest therein nor does he know of any one else having been active in causing the lands to be so entered on the books, but believes now and has always believed that they came upon the books of the assessor of the county in a legitimate and legal way and in accordance with the prescribed and required duties of the officers charged with the entry and assessment of lands for the county.

Respondent further says that it is not true, as alleged in the plaintiffs' bill, as he is informed and believes, that there has been any alteration or change made in the land books in the auditor's office, but calls for full proof of each and every allegation in relation to any improper manipulation or action in relation to said land books in the auditor's office, and asks that the book itself, if there should be any doubt growing out of the proof in relation to it, be examined and inspected by your honorable court, whereby he is advised it will appear to have been impossible that there has been made any such changes, erasures, entries, or alterations as charged after the book had reached the auditor's office or had been completed and certified.

438 That in the book itself there is intrinsic and conclusive proof that the entry of the land in the name of De Fleury of the 100,000 acres was made and certified as one of the original books to be furnished by the assessor of the county to the auditor and before it reached the auditor's office; that the book shows itself to any intelligent mind by the mere inspection of it that it has not been altered by interlineation or charging the tract of land in the name of De Fleury after the book had been completed. This tract of land was afterwards in due course of law and by the proper officer and in discharge of his official duty, so far as the respondent knows or believes, returned to the auditor as delinquent for the non-payment of taxes for the year 1870, and that the same in the same way and in no other way — certified for sale and sold and was purchased by respondent and Conrow in 1871 and a deed thereafterwards made to them in accordance with the statute.

Respondent, further answering, says that the said Thornton Conrow, so far as he knows or has reason to believe, had never been in the county of Webster or in the State of West Virginia until after the lands had been so sold and purchased, and respondent believes from information had at that time and about that time from Conrow that it was his first visit to the State of West Virginia, and respondent feels confident in stating that the said Conrow at no time prior

to that had held any communication or entered into any arrangements, by himself or through others, with John B. Shreve or any one else in relation to the entry or assessment of these lands,
439 and that each and every allegation in the bill whereby said Conrow is connected with any unlawful act or purpose of the said John B. Shreve is utterly false and groundless.

Respondent denies that there was any irregularity in the proceedings relating to the said sale and deeds of conveyance therefor appearing in the office of the recorder of Webster county as alleged in the said bill; that, so far as he knows and believes, each and ever act in relation thereto was in accordance with the requirements of the laws of West Virginia, and that by reason of the deeds of conveyance there passed to the grantees such estate therein named as was at the time vested in the said persons in whose names the lands were sold, their heirs and devisees, and such title as was vested in any one else who may have had title thereto, who had not in his own name been charged on the assessor's books of the proper county or district with the taxes on such real estate for the year for which the said land was sold and had paid the same, and that the sufficiency of such deeds to pass such title could not be questioned by a stranger to said lands.

Respondent further says that so far as the entry and sale of the 105,000-acres tract or any part thereof in the name of Francis Hyland — he can only answer and say, in the absence of any copy of memorandum from the records in relation thereto, that he believes that the land was entered in the name of Hyland and was sold and was purchased and a deed of conveyance therefor executed by the proper officer therefor and admitted to record. He is not prepared to say farther now, than that he believes the statement in the bill in relation thereto as to who purchased it, the time, etc.,
440 is not correct, but that his whole transaction and interest in relation thereto and that of Conrow, Walter Wood, or any one else associated with him will appear and correctly appear from the records of the office of the county court, Webster county; that respondent has not been able to see the "Exhibits S, T, W, V," referred to in complainants' bill. They have not yet been filed so that he could have had opportunity of referring to them as a part of the bill in order to give a more definite and specific answer. He does not know how or by whom the Hyland land was caused to be entered on the books of the assessor of Webster county. It may be, so far as respondent can now remember, that this land may have been purchased by Thornton Conrow, Walter Wood, and himself or purchased by him and assigned to them. He cannot undertake to say how the fact is in relation to that, but believes that if the exhibits were filed that are referred to in the bill the fact would be disclosed as it is.

Respondent, further answering, says that he does not know when and how Hyland acquired his title to the land or its situation before the formation of the State of Virginia; whether it was forfeited to that State or not, or whether it had afterwards become and before the sale forfeited to the State of West Virginia; that,

however the fact may be in relation to this land and the ownership thereof, so far as the same may affect his title or the interest or right of the plaintiffs, respondent calls for proof.

Respondent, further answering, says that, from his own knowledge or any information he has or ever has had on the subject, he cannot state who, besides himself and those associated with
441 him and herein named, became the purchasers of lands at that sale, and if it is in any way material to the rights of the parties involved in this suit who did or did not become purchasers thereat he requires full proof of each and every allegation in the bill in relation thereto.

Many of the allegations in this bill are, if not identical, substantially the same *with* those contained in the original and first amended and supplementary bill filed in this cause, which have heretofore been answered by this respondent, and which answers he now adopts and refers to in this one as his answers to the same allegations and averments contained in this, and asks that they be read in connection with this answer.

Respondent further says that he believes it to be true that the patent of William McClary to the 100,000 acres excepted from its operation 37,052 acres and was issued on the 21st day of January, 1796, but refers to the patent itself (a copy of which is filed) as evidence of its date and the amount and the number of acres excluded.

It is also true, as he is advised and believes, that a large number of small tracts are excluded from the grant to Robert Morris of the 153,900-acres tract which he believes was issued on the 25th day of March, 1795; respondent does not know how much of the land in the McClary tract is included within the boundaries of the Robert Morris survey. He is not familiar with the Robert Morris survey, and is unable to say whether any or how much of it so conflicts with the other tract. Neither does respondent know whether the excepted part of 37,052 acres from the McClary tract lays without or within the part which is claimed by the plaintiffs of the
442 Robert Morris tract, and, if material, calls for proof.

Respondent further says that he has no knowledge of the boundaries of the 77,104 acres of the Robert Morris grant which was claimed by the said Allen T. Caperton under his deed from John Williams and wife and cannot say, therefore, how such part of the land is situated with reference to the McClary or Banks tracts or any part of *of* them or either of them; whether this 77,104 acres is included within the McClary tract or the Banks tract or any land claimed by this respondent and his associates and his cotenants or not.

Respondent, further answering, says that from the want of knowledge or information upon the subject he is not prepared to admit or deny that the 100,000 acres, the 58,000 acres, the 25,000 acres, and 105,000 acres claimed by him and his codefendants cover and include the whole or any part of any lands claimed by the plaintiffs, but calls for full proof.

Respondent does not admit but denies that the said Allen T. Caperton in his lifetime ever was the owner of any part of the

153,900 acres granted to Robert Morris; that the exhibits filed with his bill indicating the means whereby he claims to have acquired a part of said lands were insufficient to effect such transfer, and the Exhibits No. 36 and 37 and 38 are excepted to as insufficient and improper evidence to maintain such claim.

Respondent does not admit that any of the lands claimed to have been owned by Allen T. Caperton in the said bill descended
443 to the plaintiffs, because if Caperton had been the owner of said lands it is admitted by the plaintiffs in their bill that in his lifetime his title had become forfeited to the State of West Virginia and that they remained so at the time of his death and remained there, as alleged in the bill, until 1881, so that these lands upon the death of Allen T. Caperton, their ancestor, could not have descended to his heirs, for he was not then owner of them; and respondent denies that the heirs of the said Caperton have since his death in any manner acquired title to the lands which were so vested in the State of West Virginia by forfeiture at the time of his death.

Respondent, further answering, says it may be and doubtless is true that the plaintiffs are unable to effect a sale of the lands claimed by them in their bill or any of them; but he denies that the reason for such inability to effect a sale of them is caused by any cloud cast upon their title by reason of the deeds of conveyance referred to *to* him and his codefendants as purchasers at the tax sale, but because the said Allen T. Caperton at the time of his death was the owner of no lands that could descend to his heirs, and his heirs have done nothing whereby they could legally acquire the title to them since. So the bill does not present a claim to remove a cloud from the title to the plaintiffs' lands, because they were admitted to have none until 1881, and after that time their only right was from unauthorized decrees of courts having no jurisdiction which undertook to authorize the plaintiffs as the legal owners to redeem the lands which had become irredeemable and forfeited. The records thereof, marked Exhibits A & B, are excepted to as insufficient to sustain any facts therein stated against the defendants.

444 Your respondent does not know and cannot therefore state at what price per acre the said several tracts of land were valued for the yeat 1868 by the assessor, but he denies that the same were improperly valued for assessment in that year or valued at a less price than other lands of similar quality in the same neighborhood. He believes that for that year the tract of 100,000 acres was valued at 11 cents per acre, but does not know and cannot remember at what rate the other lands were valued for that year, but he has reason to believe and does believe that an examination of the books of the assessor for the year last named will disclose the fact that thes- several tracts of land were valued by him at about the same price per acre as others in the same neighborhood of equal value. They will disclose that some of the lands claimed by the plaintiffs were for that year assessed at as low as 11 cents per acre to the said Allen T. Caperton; that respondent has no doubt that the assessor in relation to the valuation of the several lands entered by him on the boofs that year for assessment *was* placed what he

fairly estimated their comparative and relative value to be, having exercised his best judgment therein in the discharge of his duty; but respondent claims that a mistake or a wilful neglect in this respect would not affect the title in a purchaser.

Respondent believes that all these lands in which he was interested and which were valued and assessed on the books of the assessor of Webster county were placed at their full and fair valuation comparatively with other lands assessed in the county in the same neighborhood of equal value; that since the year 1870 there has been paid for the taxes and levies assessed upon the three
445 tracts, namely, of 100,000 acres, 58,500 acres, and the Welsh tract, more than nineteen thousand ($19,000) dollars. He is not enabled to say at what these lands were severally valued for each year since that time, but this is not an overestimate of the whole amount of taxes paid on these tracts of land.

Respondent, further answering, says that he admits that the said Andrew Wayne is and has been in possession of the lands in question for a number of years, reaching back to before the institution of this suit, and that he has a contract in writing for the purchase of a part of the said lands; for precisely how many acres your respondent cannot remember.

Respondent also admits that the said Thomas Myers is in possession of the said lands, and was for a number of years before the institution of this suit, and claiming to hold same under this respondent and his cotenant, as was the said Andrew Wayne, and that the said Wayne and Myers are still in possession and so claiming the said land. The respondent does not admit that the said Wayne has paid no part of the purchase-money; on the contrary, your respondent says that he has paid a part of the said purchase-money; nor is it true, as respondent believes, that the said Wayne has declared his purpose not to pay until the title to the said land is settled.

Respondent further says that he has leased to the said Jesse Hammons the said land, who is in possession of the whole of the said McClary tract, and has been continuously in possession of the said land since 1870, claiming the same under your respondent and his co-owners.

Respondent does not know and cannot say what either the
446 said Hammons or Cogar may have declared in relation to their having been deceived by the said Rich in relation to his title to the said lands or what they may have said they believed about it; but respondent does know that neither of them ever intimated to him or to any one connected with him in the ownership of the said land, so far as he has been informed, that they have been deceived about the title, or that their title is bad, and does not believe they have said so to others.

Your respondent further says that the said 58,500 acres tract and the McClary tract have been both in actual and continued possession by respondent and his cotenants and those claiming under them for more than ten years last past, and that all the taxes charged and properly chargeable thereon against them have been paid.

Respondent admits that the said Thornton Conrow is dead, and, as he is informed, he died on the 15th day of March, 1882, leaving a will whereby he devised his interest in the lands in question to his executors, Burtis Barber and William Henry, the oldest son of said Conrow, in trust for his three children, William Henry, Anna Alida, and Alfred Thornton.

The complainants have delayed the prosecution of their claim and the contest of the defendants' rights until a day so late, and until after the death of one of the important actors and without excuse for such delay, that their demand is stale and inequitable, if for no other reason than the want of diligence.

Respondent, having fully answered, prays to be hence dismissed with his costs herein expended.

B. RICH.

C. BOGGESS, *Sol.*

STATE OF PENNSYLVANIA, *Philadelphia County,* } *ss:*

Benjamin Rich, the defendant named in the foregoing an-
447 swer, this day appeared before me, the undersigned, in the State and county aforesaid, and, having been duly sworn, deposes and says that the statements contained in the foregoing answer, so far as the same are made from his own knowledge, are true, and so far as the same are made from information of others he believes them to be true.

Given under my hand and seal this fourth day of January, A. D. 1886.

BENJAMIN RICH. [SEAL.]

Subscribed and sworn to before me, at Philadelphia, Penna., this fourth day of January, A. D. 1886.

SAMUEL BELL,
[SEAL.] *U. S. Com'r.*

The joint answer of Walter Wood, Richard Wood, and Edward R. Wood, referred to, is in words and figures as follows:

448 To the honorable the judges of the circuit court of the United States for the district of West Virginia:

The joint answers of Walter Wood, Richard Wood, and Edward R. Wood to the bills and amended bills of complaint exhibited against them and Benjamin Rich, Abram Waltman, Randolph Wood, Ferdinand Sharp, D. F. Robinson, Andrew Wayne, Thomas Myers, Jesse Hammons, Adonjah H. Cogar, and Burtis Barber, executor of the last will and testament of Thornton Conrow, deceased, by Tamlin Braxton and Mary E., his wife, late Mary E. Caperton; William A. Gordon and Harrietta C., his wife, late Harrietta C. Caperton; Malinda C. Patton, widow of James F. Patton, deceased, late Malinda C. Caperton; Robert Stiles and Lelia C., his wife, late Lelia C. Caperton; E. J. Caperton, Allen Caperton, and Ella Caperton.

These respondents, not waiving any just exceptions to the said

original or either of said amended bills nor confessing the same or any part thereof not hereinafter distinctly stated, for answer, nevertheless, *for* so much and such parts as they are advised are necessary and material for them to make answer unto, answer and say:

They admit that they, together with their codefendants Benjamin Rich and the executor of Thornton Conrow, deceased, are the joint owners of the three tracts of land mentioned in the complainants' bill of one hundred thousand acres, fifty-eight thousand five
449 hundred acres, and one hundred and five thousand acres, known as the McClary, Banks, and Welsh tracts, and the times at which and the deeds whereby they acquired their title are, as they believe, truly stated in said bills.

They became the purchasers thereof in good faith and for valuable consideration and they have since their purchase, by their tenants, had the said lands in actual and continued possession for nearly fifteen years and have paid all the taxes properly chargeable thereon, amounting in the aggregate to more than nineteen thousand dollars.

Prior to the institution of this suit they never so much as heard of the said John B. Shreeve nor of any connection of his with the entry or sale of the said lands or of any combination or arrangement by him with other persons of any kind or for any purpose whatever.

Respondents have no knowledge of any of the matters alleged in said bills in reference to any fraudulent act of the said Rich, Shreeve, or any one else having relation in any manner to the said lands and cannot further answer the charges relating thereto or any of them than by saying they have no knowledge thereof, nor do they believe there is any truth whatever in relation to any such charges in said bills or either of them; these respondents, from the best of their information and belief, deny them and call for full proof, adopting as their own the answers of the said Benjamin Rich in relation to all that occurred prior to the time respondents acquired their title, which answers are true so far as they are informed.

Respondents do not admit that there was anything in the
450 proceedings relating to the assessment, sale, and conveyance of the said lands claimed by them to render the titles of the purchasers under them invalid. They are advised that, by the laws of the State of West Virginia, each tract of land therein *in* justly liable to its proportionate burden of taxes, and that such taxes constitute a lien on the land, irrespective of the persons owning or claiming it, unless, by the constitution, it is exempt from taxation. In addition to the duties required by law of the several officers charged to ascertain and enforce such lien justly imposed on each tract, it is made the duty of the owner of each tract to cause it to be entered on the assessment books of the proper county and charged with the taxes thereon and to pay the same. No irregularity by the officers in the performance of this duty—except such as appears of record and such as materially prejudices the rights of the owner—will affect the validity of the sale made to enforce the payment of the taxes assessed by them.

Caperton did not claim to be the owner of either of these tracts of lands, nor do the complainants in these bills claim to be the owners thereof, but only claim that these lands partly cover and include within their boundaries portions of other tracts of lands claimed by them as the heirs of said Allen T. Caperton; and it is submitted that, if this be true, and that Caperton, as the owner of such other tracts, had been in default of his duty thereto, neither he, if living, nor his heirs, since his death, could, for that reason, have the said deeds declared null and void, but their remedy for such part would be by an action at law for possession thereof if adversely held or claimed.

451 As to the residue of the said lands claimed by respondents, the complainants make no claim and cannot be heard in this court to question or impeach the respondents' title.

If respondents should be mistaken in supposing that the said Allen T. Caperton had no title to the lands claimed by complainants, and that respondents' title to the said lands claimed by them were invalid to so much of them as said Caperton had title to, and that he was not in any default in the payment of taxes properly chargeable thereon to him, it is nevertheless true, as they are informed and believe, that these lands so claimed by the said Caperton, the ancestor of the complainants, were, in 1874, purchased by the State of West Virginia for the delinquent taxes due thereon and were not redeemed within one year thereafter, and, by the laws of the said State, became, after the expiration of a year from the said sale, irredeemable and the title thereto vested in the State, and, having become by such purchase vested in the State of West Virginia, they, by the provisions of the 4th section of article XIII of the constitution of said State, if not otherwise disposed of, were required to remain in the State until the same should, by proceedings in the circuit court of the county in which such lands or a part thereof should lie, be sold to the highest bidder.

Respondents allege that there has been no such sale, but the title which the State took to such lands—and the complainants admit that such title was in the State prior to the year 1881—was disposed of by the State to respondents and their codefendants by the operation of section 3rd, article XIII, of the said constitu-

452 tion, because they have been in actual and continued possession of such lands, if they lie within the boundary of the tracts so purchased and claimed by respondents, or so much as does so lie within said boundaries, since the year 1870, and on which respondents and their codefendants have paid all the taxes properly chargeable thereon since that time, and they have claimed the title thereto during the whole of the said period.

Respondents claim that the complainants or their ancestor had no just ground for this suit, having so long delayed the same as to have forfeited all right to the interposition on their part by a court of equity, which in such cases requires diligence. The right to this suit, if there ever was any, began in the year 1870 and in the lifetime of the said Allen T. Caperton as alleged, and no reason is assigned nor explanation made why the said suit was delayed until

after his death and after the expenditure of a large sum of money by the respondents and their codefendants in the payment of taxes. For this reason, if for no other, their claim should not be entertained. Their claim to these lands, until their suit was commenced, had been unknown to the respondents, and the said respondents believe and charge to be true that the respondents' claim was well known to complainants and was known to the said Allen T. Caperton in his lifetime.

These complainants deny that the said Allen T. Caperton at the time of his death was the legal owner of any of the lands mentioned and described in the complainants' bills. They also deny
453 that the complainants took by descent or otherwise title to the said lands or any of them.

Respondents admit that Thornton Conrow is dead, and that he died leaving three children, for whose use and benefit he devised, as they believe, his interest in these lands to his executors named in his will, which will, they are informed, has been admitted to probate in the city of Philadelphia.

Respondents did not personally know the said Allen T. Caperton, but believe that he died about the time mentioned by the complainants in their bills, but the respondents have no knowledge or information as to who were or are his heirs or whether he died intestate; therefore they cannot admit or deny the bill in this respect.

Each and every of the allegation- in the said bills or either of them which are not herein by the respondents admitted or denied are without their knowledge, and, so far as they or each of them may be material, — call for and require full proof; and your respondents, having fully answered, pray that they may be dismissed with their costs about them herein expended.

WALTER WOOD.

BOGGESS, *Sol.*

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

Walter Wood, one of the respondents mentioned and named in the foregoing answer, having this day appeared before me, a commissioner of the circuit court of the United States for the eastern district of Pennsylvania and in the county aforesaid, and, having been duly affirmed, deposes and says that the statements con-
454 tained in said answer, so far as they are made on the knowledge of the respondents, are true, and so far as they are stated on information he believes them to be true.

WALTER WOOD.

Made, subscribed, and affirmed to before me this fifth day of January, A. D. 1886.

[SEAL.] HENRY PHILLIPS, JR.,
U. S. Commissioner, E. D. Pa.

And on another day, to wit, on the 15th day of June, 1886, the following order was made and entered of record, to wit:

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others. } In Equity.

This day came the defendants, by their counsel, and filed their exceptions to the depositions taken and filed in this cause by the complainants and moved that the same be suppressed; and thereupon the said cause upon said exceptions is set down for hearing on the 28th day of June, 1886, at which time the defendants give notice that they will insist upon the final hearing of this cause.

And on another day, to wit, on the 30th day of June, 1886, the following exhibit was filed as an "exhibit with the 2nd amended and supplemental bill" by leave of the court:

455 *Record.*

Copy of proceedings for the redemption of the lands of A. T. Caperton's estate.

In the Circuit Court of Nicholas County, West Virginia, August Term.

AUGUST 5TH, 1879.

John M. Hutchison, commissioner of school lands for Nicholas county, this day filed a report, which is in the words and figures following, to wit:

To the Hon. Homer A. Holt, judge of the circuit court of Nicholas county, West Virginia:

The undersigned, commissioner of school lands in and for the county of Nicholas, duly appointed and qualified, reports to said court that by letters patent bearing date on the 30th of March, 1795, the Commonwealth of Virginia granted to John Staples, on a survey bearing date on the 19th day of April, 1794, and made for Hudson Martin, a tract of 1,703 acres of land lying in the county of Greenbrier, but now in Nicholas county, adjoining a survey of 153,900 acres made for said Martin and lands of Robert Young; that said tract was forfeited in the name of said Staples and sold by John Brown, commissioner of delinquent and forfeited lands, to John Williams, who was the highest bidder at the sale and, having paid the purchase-money, received his deed therefor from said commissioner; that said John Williams, by deed bearing date on the 21st day of February, 1850, conveyed the said tract of land to Allen T. Caperton; that said deed was duly recorded and the land transferred to and regularly charged with the taxes chargeable thereon in the name of the said Caperton first in the year 1851 and regularly thereafter up to and including the year 1873; that the assessor's land book for said county made out and returned for the year 1874 does not contain any charge for State or other taxes against the said 1,703

acres of land. The same is wholly omitted therefrom and has
456 not been charged with the taxes chargeable thereon for any year since the said year 1873 on any of the land books made out for said county returned to and now remaining in the office of the clerk of the county court of said county; that for five successive years after the year 1869, to wit, for the years 1874, 1875, 1876, 1877, and 1878, the owners of said tract of land have not been charged on said land books with any State tax on said land; that for no one or more of said five years has any part of said tract of land been charged on the said books with any State tax in the name of the owners; that said tract of land contains 1,000 acres and more, and that title of the owners to the whole of said land is therefore forfeited to and vested in the State of West Virginia and liable to be sold for the benefit of the school fund; that the probable value of said land is fifty cents per acre.

Your commissioner further reports that the said tract of land is not charged with any taxes in any other name than is hereinbefore stated, and that the said land is not occupied by any other person or persons other than those for whose default the same became forfeited and those claiming under them.

Respectfully submitted,

J. M. HUTCHISON,
Commissioner of School Lands.

Aug. 4th, 1879.

And thereupon the court made the following decree, to wit:

"John M. Hutchison, commissioner of school lands for Nicholas county, this day submitted a report of forfeited lands, from which it appears that the following tract is subject to sale as forfeited under the provisions of chapter 134 of the acts of 1873 entitled 'An act to
457 provide for the sale of escheated, forfeited, and unappropriated lands for the benefit of the school fund,' to wit, a tract of 1,703 acres on Cherry river near the mouth adjoining a survey of 153,900 acres made for Hudson Martin and granted to John Staples March 30th, 1795, and forfeited for non-entry from the years 18— to 1869, which land is sufficiently described in said report, and the same appears in all respects to be regularly made, and that no person is in condition to take the benefit of the forfeiture thereof.

It is therefore adjudged, ordered, and decreed that said commissioner, after having given notice of the time and place of sale by notice duly published in the "Mountaineer," a newspaper published in the town of Sutton, in Braxton county, that being nearest the place of sale at which a newspaper is published, and by posting said notice at the court-house door of Nicholas county and at least four other of the most public places in said county for at least thirty days next preceding said sale, shall proceed to sell at public auction, on some court day for said county, at the court-house thereof, the aforesaid tract of land for one-fourth of the purchase-money in cash and the balance upon a credit of twelve months, taking from the purchaser a bond, with good security, bearing interest from date,

and shall retain the title to and a lien on the said land for the residue of the purchase-money until the same is fully paid. He shall at the next term of the court following said sale return a report of said sale to the court, designating particularly the date of each sale, the local situation of and number of acres in each tract, the name of the purchaser, the price at which it sold, the amount paid cash in hand, and the costs and expenses of sale. He shall also return the bond for the deferred installment. Before executing this order said commissioner is authorized to survey or employ a competent surveyor to survey the aforesaid tract of land or so much as he may deem it expedient to have surveyed, who shall make a report
458 of the tract surveyed, showing the quantity of land, the local situation and boundaries thereof, together with such other information as may be deemed necessary and expedient to promote advantageous sales thereof, and no lot or division shall contain more than 640 acres. The report of the surveyor, with a plat and description of each tract surveyed, shall be returned by said commissioner with his report of sale to court."

And on the 7th day of August, at said term, John M. Hutchison, com'r as aforesaid, filed another report in the words following, to wit:

To the Honorable Homer A. Holt, judge of the circuit court of Nicholas county, West Virginia:

The undersigned, commissioner of school lands in and for the county of Nicholas, duly appointed and qualified, reports to said court that by several patents bearing date on the — day of ——, 1792, there was granted to Robert Young, Benjamin Hide, Humphrey McCasland, William Drummond, and John Rayburn ten several tracts of land lying on south side of Gauley river, below Cherry river, on some of the branches of both streams, nine of which tracts contains 1,000 acres each, and one 1,260 acres; that by patent bearing date on the — day of ——, 179–, there was granted to Robert Steel a tract of 1,035 acres of land on the south side of Gauley river and lying between said above block of ten surveys and said river; that the eleven foregoing tracts of land were forfeited to the Commonwealth of Virginia in the name of the original grantees for non-entry on the commissioner's books and non-payment of taxes for the years 1811 to 1843, inclusive, and sold by John Brown, commissioner of delinquent and forfeited lands for the county of Nicholas aforesaid, and John Williams became the purchaser at the sales of the whole of the first ten tracts and a lot of 693 acres out of the 1,035-acre tract forfeited in the name of Steel, and the said John Brown by deed bearing date 30th January, 1843, conveyed
459 the said ten tracts and lot of 693 acres to the said John Williams.

That by patent bearing date on the 25th day of March, 1795, there was granted to Robert Morris, on a survey made for Hudson Martin, 153,900 acres of land lying on Gauley, Cherry, Cranberry, and Williams river-; that by deed bearing date on the 17th day of March, 1797, Robert Morris, of the city of Philadelphia, conveyed

the said tract of land to one William Crammond; that the said Crammond, by deed bearing date on the 8th day of October, 1814, conveyed the said tract to Thomas Astley; that Littleton Kirkpatrick and Sophia, his wife, late Sophia Astley, only child and heir-at-law of Thomas Astley, deceased, by deed dated on the 10th of December, 1840, conveyed the said tract of land to Henry Crammond, of the city of Philadelphia, and the same was forfeited to the Commonwealth of Virginia in his name and sold by the commissioner of delinquent and forfeited lands for Nicholas county, who conveyed the same to John Williams, and the said Henry Crammond, in whose name the said large tract was forfeited, afterwards, on the — day of ——, 18—, by deed which is of record in the county court clerk's office of Greenbrier county, conveyed the whole of said tract of 153,900 acres to the said John Williams.

And the said John Williams by two deeds, both bearing date on the 21st day of February, 1850, conveyed to Allen T. Caperton 77,104 acres out of said survey of 153,900 acres, the whole of the nine surveys of 1,000 acres each, the 1,260 acres, the 693-acre lot, together with five other tracts which had been conveyed to him by the said commissioner of delinquent and forfeited lands, to wit, 800, 300, 1,389½, 100, and 1,703 acres, the last of which tracts lies on both sides of Cherry river, near the mouth thereof, and is forfeited for non-entry; that the said deeds were duly recorded and the said lands transferred to and, except the said 1,703 acres, regularly charged with the taxes chargeable thereon in the name of the said
460 Allen T. Caperton; that the said lands, except the said 1,703-acre tract, were returned delinquent by the sheriff of Nicholas county for the non-payment of the State, State school, county, and district taxes due and assessed thereon for the year 1874; which taxes, together with interest, damages, and commissions, amounted at the time of sale to the following sums, to wit:

On the residue of the 77,104 acres then charged in the name of Allen T. Caperton as—

		41,172 acres, north side of Cherry			$603 52
	No. of lot.				
On the	1,	1,000 acres	on Gauley waters		14 65
"	2,	1,000 "	"		14 70
"	3,	1,000 "	"		14 87
"	4,	1,000 "	"		14 86
"	5,	1,000 "	"		14 70
"	6,	1,000 "	"		14 86
"	7,	1,000 "	"		14 70
"	8,	1,000 "	"		14 70
"	9,	1,000 "	"		14 65
"	10,	1,260 "	"		18 57
"		800 "	"		11 87
"		693 "	"		10 18
"		1,389½ acres	near Cherry river		20 63
"		300 "	north side Cherry		4 47
"		100 "	" "		5 92

For which sums the sheriff aforesaid, on the 13th day of October, 1875, sold the said several tracts of land, and the same were purchased by him on behalf and for the State of West Virginia; that the time allowed by law for the redemption of the said lands having expired, the same were certified by the auditor of Nicholas
461 county as forfeited to the State and liable to sale for the benefit of the school fund.

Your commissioner further reports that the said tracts of land are not charged with any taxes in any other name than is hereinbefore stated, and that said lands are not occupied by any other person or persons other than those for whose default the same became forfeited and those claiming under them.

Respectfully submitted.

J. M. HUTCHISON,
Commissioner of School Lands.

August 4th, 1879.

And thereupon the court made the following decree, to wit:

"John M. Hutchison, commissioner of school lands for Nicholas county, this day submitted a report of forfeited lands, from which it appears that the following tracts are subject to sale as forfeited under the provisions of chapter 134 of the acts of 1873, entitled 'An act to provide for the sale of escheated, forfeited, and unappropriated lands for the benefit of the school fund,' to wit, a tract of 41,172 acres, being the residue in Nicholas county of the 77,104 acres conveyed to said Caperton by John Williams; also lots No. 1, 2, 3, 4, 5, 6, 7, 8, and 9, of 1,000 acres each; 1,260 acres, 800 acres, 693 acres, 1,389½ acres, 300 acres, and 100 acres, lying on waters of Gauley and Cherry, on the south side of the Gauley, in said county of Nicholas, being part of the lands conveyed to said Caperton by John Williams for the taxes of the year 1874, which lands are sufficiently described in said report, and the same appears in all respects to be regularly made, and that no person is in condition to take the benefit of the forfeiture thereof.

And James S. Craig, agent for James F. Patton and John Echols, commissioners and administrators of the estate of Allen T. Caperton, deceased, filed his petition asking leave to redeem certain lots which, it appears, he has sold to Abraham H. Spencer, Wm. Dawson,
462 George P. Ward, Maston Perkins, John Bennett, Washington Spencer, Clinton Spencer, Wm. G. Gaines, A. J. Bails, Wellington Dorsey, Jacob E. Seabolt, James J. Hanna, H. G. Mullens, James M. Hinkle, P. B. Lester, Elijah H. Platt, Henry Stowers, James A. Spencer, Philip Hinkle, Wm. D. Spencer, and —— Rinehol t, — the said commissioner is directed to ascertain the taxes in arrear, with legal interest thereon, on said lots and report the same to this court at its next term, and the sale of said lots so sold by said Craig is suspended.

It is therefore adjudged, ordered, and decreed that said commissioner, after having given notice of the time and place of sale by notice duly published in the 'Mountaineer,' a newspaper published in the town of Sutton, in Braxton county (that being nearest the

place of sale at which a newspaper is published), and by posting said notice at the court-house door of Nicholas county and at least four other of the most public places in said county for at least 30 days next preceding said sale, shall proceed to sell at public auction, on some court day for said county, at the court-house thereof, the aforesaid several tracts of land, for one-fourth of the purchase-money in cash and the balance upon a credit of twelve months, taking from the purchaser or purchasers a bond or bonds, with good security, bearing interest from date, and shall retain the title to and a lien on the said lands for the residue of the purchase-money until the same is fully paid. He shall, at the next term of court following said sale, return a report of said sales to the court, designating particularly the date of each sale, the local situation of and number of acres in each tract, the name of the purchaser, the price at which it sold, the amount paid cash in hand, and the costs and expenses of sale. He shall also return the bonds for the deferred installments.

Before executing this order said commissioner is authorized to survey, or employ a competent surveyor to survey, the aforesaid tracts of land or so much as he may deem it expedient to
463 have surveyed, who shall make a report of the tracts surveyed, showing the quantity of land, the local situation and boundaries thereof, together with such other information as he may be able to procure in relation to the same. He shall also make such divisions of the said land as may be deemed necessary and expedient to promote advantageous sales thereof, and no lot or division shall contain more than 640 acres. The report of the surveyor, with a plat and description of each tract surveyed, shall be returned by said commissioner with his report of sale to court."

And thereupon James S. Craig filed a petition, which is in the following words and figures, to wit:

To the Hon. Homer A. Holt, judge of the circuit court of Nicholas county, in the State of West Virginia:

The petition of James S. Craig, agent for James F. Patton and John Echols, commissioners in the case, in the circuit court of Monroe county, of A. T. Caperton's heirs and creditors and administrators of the said estate, respectfully shows that John M. Hutchison, commissioner of school lands for Nicholas county, has reported for sale as forfeited 41,172 acres, nine lots of 1,000 acres each, a lot or tract of 1,260 acres, 800 acres, 693 acres, 1,389½ acres, 300 and 400 acres, all of which lands lie on Gauley, Cherry, Cranberry, and Williams rivers and their waters and belong to the estate of the late Allen T. Caperton and were forfeited in his name; the title to which and description thereof is more fully described in the said report of said commissioner, Hutchison, and that said lands are forfeited for the taxes of 1874.

Your petitioner further shows that as agent aforesaid from the 16th day of May, 1877, to the 1st day of August, 1879, he sold to James J. Hanna 100 acres, to Wellington Dorsey 50 acres, to Jacob E. Seabolt 50 acres, to Washington Spencer 100 acres, to John W.

Bennett 100 acres, to Wm. D. Spencer 200 acres, to Philip
464 Hinkle 100 acres, to James A. Spencer 100 acres, to Elijah H. Platt 50 acres, to P. B. Lester 80 acres, to James M. Hinkle 100 acres, to Andrew J. Bails 125 acres, to George P. Ward 228 acres, to H. G. Mullens 100 acres, to Geo. W. Garnes 70 acres, to Martin Perkins 100 acres, to Abraham H. Spencer 50 acres, to Henry Stowers 100 acres, to Clinton Spencer 100 acres, and —— Rhineholdt 100 acres, which lots are included within and embraced by the boundary lines of the said tracts so reported as forfeited; that the lien of the State for taxes thereon is of superior dignity to vendor's lien, and unless said lands so sold as aforesaid are redeemed, released, and exonerated from said forfeiture and taxes the said Patton and Echols, as such commissioners, cannot convey to said purchasers a valid title for the lands so purchased by said purchasers.

Your petitioner therefore prays that he be allowed to redeem said several lots of land so sold by him as aforesaid by the payment into court of all taxes charged and chargeable thereon, or which, if said land had not been forfeited, would have been charged or chargeable thereon since the formation of this State, with interest at the rate of twelve per centum per annum and costs of proceedings; that the said commissioner of school lands ascertain and report the same to the court at its next term, and that the sale of said lots of land be suspended and stayed until the further order of the court; and, as in duty bound, your petitioner will ever pray, &c.

Aug. 4th, 1879.

JAMES S. CRAIG, *Agent.*

And at the March term of said court, on the 3rd day of March, 1880, John M. Hutchison, commissioner as aforesaid, filed a report and calculation of taxes, which is in words and figures following, to wit:

To the Hon. Homer A. Holt, judge of the circuit court of Nicholas county, in the State of West Virginia:

The undersigned, commissioner of school lands in and for the county of Nicholas, directed by an order of this honorable
465 court made on the 7th day of August, 1879, to ascertain and report to court at the present term the taxes and interest in arrear on certain lots of land heretofore sold by James S. Craig, agent for James F. Patton and John Echols, commissioners in the case, in Monroe circuit court, of A. T. Caperton's adm'rs against A. T. Caperton's heirs and creditors, which lands so sold by said Craig are a part of the lands belonging to the estate of the said A. T. Caperton, deceased, lying in Nicholas county, reported as forfeited for the non-payment of the taxes due thereon for the year 1874, the sale of which, by order of this court, has been suspended—

Pursuant to said order your commissioner would respectfully report upon the several lots specially named by said James S. Craig, agent, in his petition, as follows, to wit:

Names of purchasers.	Taxes with legal interest.				
	Acres.	Taxes, &c., 1874.	Taxes, &c., 1875-'6.	Taxes, &c., 1879.	Total taxes and interest.
James J. Hanna	100	2 25	1 88	60	4 73
Wellington Dorsey	50	1 12	94	30	2 36
Jacob E. Seabolt	50	1 12	94	30	2 36
Washington Spencer	100	2 25	1 88	60	4 73
John W. Bennett	100	2 25	1 88	60	4 73
Wm. D. Spencer	200	4 50	3 76	1 20	9 46
Philip Hinkle	100	2 25	1 88	60	4 73
Jas. A. Spencer	100	2 25	1 88	60	4 73
Elijah H. Platt	50	1 12	94	30	2 36
P. B. Lester	80	1 80	1 51	48	3 79
Jas. M. Hinkle	100	2 25	1 88	60	4 73
Andrew J. Bails	125	2 81	2 36	75	5 92
George P. Ward	228	5 13	4 30	1 36	10 79
H. G. Mullens	100	2 25	1 88	60	4 73
Geo. W. Garnes	70	1 57	1 32	42	3 31
Mastin Perkins	100	2 25	1 88	60	4 73
A. H. Spencer	50	1 12	94	30	2 36
Henry Stowers	100	2 25	1 88	60	4 73
Clinton Spencer	100	2 25	1 88	60	4 73
—— Rhineholdt	100	2 25	1 88	60	4 73
Totals	2,003	45 04	37 69	12 01	$94 74

That said several lots of land sold by said Craig to the parties named in said petition aggregate 2,003 acres; that the taxes
466 on same, with legal interest thereon for the year 1874, amount to the sum of $45.04, for the years 1875 and 1876 to $37.69, and for the year 1879 to $12.01, making in all $94.74; and it appears, from the recorded list of sales made by the sheriff of Nicholas county in October, 1879, and the published advertisement of same by said sheriff, that he has received all the taxes on said lands for the years 1877 and 1878, which, with said sum of $94.74, include all the taxes charged and chargeable thereon to this time, to wit, March 1st, 1880, with twelve per cent. per annum interest thereon; that $12.00 will cover the costs of this proceeding, and no person is in condition to take the benefit of the forfeiture to any or either of said lots of land.

Respectfully submitted.

J. M. HUTCHISON,
Commissioner of School Lands for Nicholas County.

March 1st, 1880.

Supplemental.

The whole amount necessary to redeem all the lands of the estate of A. T. Caperton, dec'd, in Nicholas county, consisting of sixteen tracts or surveys, which aggregate 55,023½ acres, is $2,587.94, which

is divided as follows, to wit: For the year 1874, for which said lands were forfeited, $1,232.78; for the years 1875 and 1876, $1,038.62, and for the year 1879, $216.54, which sums include interest at the rate of twelve per cent. per annum to March 1st, 1880; but said amounts do not include the tract of 1,703 acre- *tract* nor interest thereon forfeited for non-entry.

March 1st, 1880.

J. M. HUTCHISON,
Commissioner of School Lands.

467 And the court on said day entered the following decree, to wit:

John M. Hutchison, commissioner of school lands for Nicholas county, this day submitted a calculation and report of the taxes due on twenty lots of land belonging to the estate of A. T. Caperton, dec'd, and forfeited in his name for the non-payment of the taxes assessed thereon for the year 1874, which lots of land were heretofore sold by James S. Craig, agent for James F. Patton and John Echols, commissioners, out of the lands of said Caperton's estate in Nicholas county as follows, to wit: To James J. Hanna, 100 acres; Wellington Dorsey, 50 acres; Jacob E. Seabolt, 50 acres; Washington Spencer, 100 acres; John W. Bennett, 100 acres; Wm. D. Spencer, 200 acres; Philip Hinkle, 100 acres; James A. Spencer, 100 acres; Elijah H. Platt, 50 acres; P. B. Lester, 80 acres; James M. Hinkle, 100 acres; Andrew J. Bails, 125 acres; George P. Ward, 228 acres; H. G. Mullens, 100 acres; George W. Garnes, 70 acres; Maston Perkins, 100 acres; A. H. Spencer, 50 acres; Henry Stowers, 100 acres; Clinton Spencer, 100 acres, and —— Rhineholdt, 100 acres, aggregating 2,003 acres; and the said report appearing in all respects to be correct and regularly made, showing therein the amount of taxes, with legal interest thereon, on each of said lots separately for each year which the taxes are in arrear upon said land to this time and the aggregate thereof for each year on all the said lots together, which for the year 1874, for which said land was forfeited, is $45.04, for the years 1875 and 1876 is $37.69, which sums include interest at twelve per cent. per annum, and the aggregate thereof for all the years for which the taxes are in arrear upon said lots taken together, with — twelve per cent. per annum as aforesaid, to this time is $94.74, and that no person is in condition to take the benefit of the forfeiture to any or either of said lots of land; and it appearing from the report of said Commissioner Hutchison, reporting as forfeited for the taxes of 1874 sixteen
468 surveys, of which the foregoing twenty lots are parts, that the whole of said surveys were by two deeds, bearing date on the 21st day of February, 1850, conveyed by John Williams to Allen T. Caperton, who died seized of the same, and his heirs-at-law are therefore sole owners thereof; and James S. Craig, agent as aforesaid, having heretofore filed his petition praying to be allowed to redeem from forfeiture said twenty lots of land sold by him in the manner described in said petition, the court consents thereto; and thereupon the said James S. Craig paid into court on account of the taxes

of the year 1874, for which said land was forfeited, $45.04; on account of the taxes of 1875 and 1876, $37.69; on account of the taxes of 1879, $12.01, and showed by the sheriff's recorded and advertised list of sales that all the taxes of 1877 and 1878 have been paid to the sheriff of Nicholas county, which include all the taxes charged and chargeable on said several lots of land to this time, with interest at the rate of twelve per cent. per annum, and $—, the costs of this proceeding.

It is therefore adjudged, ordered, and decreed that the several lots of land, containing in the aggregate 2,003 acres, be redeemed, released from said forfeiture, and exonerated and released from all other former taxes and damages, if any such there be, and no sale thereof shall be made on account thereof, and said land is hereby reinstated and directed to be entered and charged on the land books of said county of Nicholas in the name of the said A. T. Caperton's estate. As to the residue of said lots this cause is continued.

And at another term of said court, to wit, at a circuit court held for said county on the 10th day of August, 1881, the following petition was filed, to wit:

The petition of Mary E. Braxton, wife of Tamlin Braxton; E. J. Caperton, Harrietta C. Gordon, wife of William A. Gordon; Malinda C. Patton, wife of James F. Patton; Allen Caperton,
469 Lelia C. Stiles, wife *wife* of Robert Stiles, and Ella Caperton, children and heirs-at-law of Allen T. Caperton, dec'd, filed in the circuit court of Nicholas county, West Virginia.

Your petitioners respectfully show—

That John M. Hutchison, commissioner of school lands for Nicholas county, has reported for sale as delinquent and forfeited in the name of Allen T. Caperton the following lands lying on Gauley, Cherry, Cranberry, and Williams rivers and their waters, in said county, to wit:

41,171½ acres, nine lots or tracts of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 30 acres, and 400 acres; also a tract of 800 acres; but as said Caperton never owned a tract of 800 acres in said county this latter tract has been erroneously charged with taxes and reported in his name.

That the said Caperton departed this life intestate in the month of July, 1876, leaving your petitioners as his only heirs-at-law.

That at the time of his death the said Caperton was the legal owner in fee of all the aforesaid lands, except the said 800 acres, by title legally and regularly derived from the Commonwealth of Virginia in the manner set out in the report aforesaid of the commissioner of school lands, and as will more fully appear from the title papers to said lands herewith presented for the inspection and examination of the court.

That upon the death of said Caperton the legal title and ownership of said lands devolved upon your petitioners, and that they are still the owners thereof.

That by authority of a decree of the circuit court of Monroe

county, made in the suit of A. T. Caperton's administrators *vs.* A. T. Caperton's heirs and others, John Echols and J. F. Patton, commissioners, by their agent, J. S. Craig, sold to Jas. J. Hanna and 19 others different lots, aggregating 2,003 acres, parts of the said
470 lands; that the said commissioners filed their petition in this court for the redemption of said lots; that the taxes thereon were reported to be $94.74 as of August 1, 1879, and at the August term, 1879, of this court they paid into court said sum of $94.74, and an order was made redeeming said lots, as will more fully appear from said petition, report, and order of court here made parts of this petition.

Your petitioners therefore pray—

That they may be allowed to redeem the aforesaid several tracts of land by paying into court all taxes charged and chargeable thereon or which, if said land had not been forfeited, would have been charged thereon since the formation of this State, with interest according to law and the costs of this proceeding.

That the commissioner of school lands for this county be required to ascertain and report all said taxes, with the interest thereon, subject to a credit for the $94.74 paid thereon as aforesaid.

That he also ascertain and report whether or not there is any one in a condition to take the benefit of the forfeiture of said lands under the provisions of section three of the XIII article of the constitution of this State, and

That your petitioners may have such other and general relief as they may be entitled to in the premises.

MARY E. BRAXTON AND ALS.,
Petitioners, by Counsel.

SNYDER, *Sol. for Petitioners.*

And thereupon the court entered the following order, to wit:

This day Mary E. Braxton and others, as the heirs-at-law of Allen T. Caperton, deceased, by their counsel, A. C. Snyder, filed in court their petition praying to be allowed to redeem the following tracts of land returned delinquent and forfeited in the name of said A. T. Caperton and in said petition mentioned, viz:
471 41,171½ acres, nine lots of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 300 acres, and 400 acres of land.

It is therefore ordered, on the motion of said petitioners, that James S. Craig, commissioner of school lands for the county, do ascertain and report to this court:

First. Whether or not there is any person in a condition to take the benefit of the forfeiture of said lands or any part thereof under the provisions of section three of article thirteen of the constitution of this State.

Second. All the unpaid taxes due and chargeable on said lands or which, if said lands had not been forfeited, would be chargeable thereon since the formation of this State, with interest thereon at the rate of twelve per cent. per annum from the time said taxes should have been paid by law, but he shall allow a credit on said taxes and interest for the amount paid on account of the redemption of 20 lots, parts of said land mentioned in said petition; and

Any other matter deemed pertinent by himself or required by said petitioners.

And at said term, on the 11th day of August, 1881, James S. Craig, commissioner of school lands for said county, appointed in the room of John M. Hutchison, resigned, submitted the following report, to wit:

472 *A. T. Caperton's Estate.*

Calculations of all taxes on all lands properly chargeable to the heirs of Allen T. Caperton, deceased, in the county of Nicholas, for the year 1880, for which year said lands were omitted from the land books of said county. The calculation includes interest from Jan'y 20th, 1881, to Aug. 10th, 1881.

Acres in each tract.	State tax.	State school tax.	County tax.	District school tax.	District building fund.	Total on each tract.
1,000	1 06	53	3 39	1 85	2 12	8 95
1,000	1 06	53	3 39	1 85	2 12	8 95
1,000	1 06	53	3 39	1 85	2 12	8 95
1,000	1 06	53	3 39	1 85	2 12	8 95
1,000	1 06	53	3 39	1 85	2 12	8 95
1,000	1 06	53	3 39	1 85	2 12	8 95
1,000	1 06	53	3 39	1 85	2 12	8 95
1,000	1 06	53	3 39	1 85	2 12	8 95
1,000	1 06	53	3 39	1 85	2 12	8 95
1,260	1 31	66	4 19	2 29	2 62	11 07
693	72	36	2 31	1 26	1 44	6 09
1,389½	1 47	74	4 71	2 58	2 94	12 44
41,171½	42 82	21 41	137 02	74 93	85 64	361 82
300	32	16	1 02	56	64	2 70
400	42	21	1 36	74	85	3 68
						$478 35
Interest from Jan'y 20th, 1881, to Aug. 10th, 1881, @ 12 %						31 89
Total taxes and interest of 1880						$510 24

1879.

1,000	1 06	53	2 86	1 33		5 78
1,000	1 06	53	2 86	1 33		5 78
1,000	1 06	53	2 86	1 33		5 78
1,000	1 06	53	2 86	1 33		5 78
1,000	1 06	53	2 86	1 33		5 78
1,000	1 06	53	2 86	1 33		5 78
1,000	1 06	53	2 86	1 33		5 78
1,000	1 06	53	2 86	1 33		5 78
1,000	1 06	53	2 86	1 33		5 78
1,260	1 31	66	3 54	1 64		7 15
693	72	36	1 95	90		3 93
1,389½	1 47	74	3 98	1 84		8 03
41,171½	42 72	21 36	115 33	53 39		232 80
300	32	16	86	40		1 74
400	42	21	1 14	53		2 30
						$307 97
Interest at 12 % from Jan'y 20th, 1880, to Aug. 10th, 1881						57 48
Total taxes and interest of 1879						$365 45

473 1876.

1,000	1 06	53	3 18	1 32	53	6 62
1,000	1 06	53	3 18	1 32	53	6 62
1,000	1 06	53	3 18	1 32	53	6 62
1,000	1 06	53	3 18	1 32	53	6 62
1,000	1 06	53	3 18	1 32	53	6 62
1,000	1 06	53	3 18	1 32	53	6 62
1,000	1 06	53	3 18	1 32	53	6 62
1,000	1 06	53	3 18	1 32	53	6 62
1,000	1 06	53	3 18	1 32	53	6 62
1,260	1 31	66	3 94	1 64	66	8 21
693	72	36	2 16	90	36	4 50
1,389½	1 74	74	4 42	1 84	74	9 21
41,171½	42 71	21 36	128 14	53 39	21 36	266 96
300	32	16	95	40	16	1 99
400	42	21	1 26	53	21	2 63
						$353 08
Interest at 12 % from Jan'y 20th, 1877, to Aug. 10th, 1881						193 02
Total taxes and interest of 1876						$546 10

1875.

1,000	1 00	50	2 70	1 00	25	5 45
1,000	1 00	50	2 70	1 00	25	5 45
1,000	1 00	50	2 70	1 00	25	5 45
1,000	1 00	50	2 70	1 00	25	5 45
1,000	1 00	50	2 70	1 00	25	5 45
1,000	1 00	50	2 70	1 00	25	5 45
1,000	1 00	50	2 70	1 00	25	5 45
1,000	1 00	50	2 70	1 00	25	5 45
1,000	1 00	50	2 70	1 00	25	5 45
1,260	1 26	63	3 40	1 26	32	6 87
693	69	35	1 87	69	17	3 77
1,389½	1 39	69	3 75	1 39	35	7 57
41,171½	41 07	20 54	110 89	41 07	10 27	223 84
300	30	15	81	30	08	1 64
400	40	20	1 08	40	10	2 18
						$294 92
Interest at 12 % from Jan'y 20th, 1876, to Aug. 10th, 1881						196 61
Total taxes and interest of 1875						$491 53

1,000	2 26	1 13	4 97	2 83	2 26	13 45
1,000	2 26	1 13	4 97	2 83	2 26	13 45
1,000	2 26	1 13	4 97	2 83	2 26	12 45
1,000	2 26	1 13	4 97	2 85	2 26	13 45
1,000	2 26	1 13	4 97	2 83	2 26	13 45
1,000	2 26	1 13	4 97	2 83	2 26	13 45
1,000	2 26	1 13	4 97	2 83	2 26	13 45
1,000	2 26	1 13	4 97	2 83	2 26	13 45
1,000	2 26	1 13	4 97	2 83	2 26	13 45
1,260	2 85	1 42	6 26	3 56	2 85	16 94
693	1 57	78	3 45	1 96	1 57	9 33
1,389½	3 14	1 57	6 91	3 93	3 14	18 69
41,171½	92 82	46 41	204 21	116 03	92 82	552 29
300	68	34	1 49	85	68	3 04
400	90	45	1 99	1 13	90	5 37
						$726 71
Interest at 12 % from Jan'y 20th, 1875, to Aug. 10th, 1881						571 68
Total taxes and interest of 1874						$1,298 39

Recapitulation of All Taxes and Interest Due on Caperton Lands on the 10th Day of August, 1881.

1874.	Total taxes and interest due		1,298 39
1875.	" " " "		491 53
1876.	" " " "		546 10
1877.	Paid to sheriff of Nicholas		
1878.	" " "		
1879.	Total taxes and interest due		365 45
1880.	" " " "		510 24
	Total		3,211 71
Paid into court March, 1880		94 74	
Interest thereon @ 12 % to Aug. 10th, 1881		16 10	
	Amount of credit deducted		110 84
Balance due to school fund			$3,100 87

The foregoing calculation and statement of taxes embraces all the lands to which the heirs of the late Allen T. Caperton claim title in the county of Nicholas, and are the only tracts which should be charged on the land books of said county.

To the circuit court of Nicholas county, West Virginia:

The undersigned, commissioner of school lands in and for
475 said county, pursuant to the order entered by said court on the 10th day of August, 1881, requiring certain matters to be reported relative to fifteen several tracts of land reported as delinquent and forfeited in the name of A. T. Caperton, respectfully report, as required in said order:

First. That there is no person or persons in condition to take the benefit of the forfeiture to any one or any part of either of said tracts of land under the provisions of section 3 of article 13 of the constitution of this State.

Second. All the unpaid taxes due and chargeable on said lands, or which, if said lands had not been forfeited, would be chargeable thereon since the formation of this State, with interest thereon at the rate of twelve per centum per annum from the time said taxes should have been paid by law are shown by the State and calculation of taxes on fifteen tracts thereof herewith returned as part of this report, showing the unpaid balance of said taxes due the school fund to be $3,100.87, after allowing the credit, as required by said order, of money paid in redemption of twenty lots, part of said tracts heretofore redeemed.

Third. Commissioner deems it pertinent to report here that the heirs of the said A. T. Caperton have no title nor do they claim to have any title to the tracts of 800 and 100 acres reported as forfeited in the name of said A. T. Caperton in the report of Commissioner John M. Hutchison, reporting all the said lands as forfeited, and your commissioner does not embrace in his calculation any charge of taxes on said two tracts of 800 and 100 acres against the petitioners, as they disclaim any title thereto.

Your commissioner reports further that he does not embrace in said calculation any charge of taxes against the tract of 1,703 acres reported by Commissioner Hutchison as forfeited for non-entry, as it is evidently the same tract as the 1,389½ acres charged on
476 the books in the name of said Caperton, which 1,389½ is the residue of said 1,703-acre tract after deducting 313½ acres conveyed by said Caperton to Solomon Taylor.

Commissioner does not include in his report and calculation any charge of taxes against either of the fifteen tracts named therein and sought to be redeemed by petitioners for the years 1877 and 1878, for the reason that it appears from the sheriff's recorded list on report of sales, as well as the advertised list of sales made to individuals, that all the said tracts were sold by said sheriff, on account of said taxes of said years 1877 and 1878, on the — day of October, 1879, and were purchased by individuals who paid all the taxes due the State, county, and district thereon, as shown by the report and advertisement aforesaid.

Respectfully submitted.

JAMES S. CRAIG,
Commissioner of School Lands for Nicholas County.

Aug. 10th, 1881.

And thereupon the court, on the 11th day of August, 1881, entered the following decree, to wit:

This day James S. Craig, commissioner of school lands for Nicholas county, filed his report, pursuant to an order entered on a former day of this court, showing the aggregate amount of taxes and interest due and unpaid against the fifteen tracts of 41,171½ acres, nine lots of 1,000 acres each, 1,260 acres, 639 acres, 1,389½ acres, 300 acres, and 400 acres of land of Allen T. Caperton, deceased, in Nicholas county, and in the petition of Mary E. Braxton and others, the heirs of said A. T. Caperton, mentioned and described; and thereupon this matter came on to be heard upon the papers hereto-

fore read, the report of School Commissioner James S. Craig aforesaid, and the argument of counsel.

477 On consideration whereof, the court being of opinion that said report is sufficient and regularly made in all respects, and there being no exceptions filed thereto—

It is adjudged, ordered, and decreed that said report be, and the same is hereby, ratified and confirmed.

And it appearing from said report that the unpaid taxes due and chargeable against said several tracts of land, viz., 41,17-½ —, nine lots of 1,000 acres each, 1,260 acres, 639 acres, 1,389½ acres, 300 acres, and 400 acres since the formation of this State and prior thereto, with interest thereon at the rate of twelve per centum per annum, as required by law, amount as of this date to the aggregate sum of $3,100.87;

And it further appearing that there is no person in a position to take the benefit of the forfeiture of said lands or any part thereof under the provisions of section 3 of article 13 of the constitution of this State, and petitioners, the heirs-at-law of the said Allen T. Caperton, deceased, having exhibited to the court their title papers showing that they have title to each of the aforesaid fifteen tracts of land regularly derived from the Commonwealth of Virginia, the court is of opinion and decides that said petitioners, the heirs-at-law of said A. T. Caperton, deceased, have a good and valid title to each of said several tracts of land and are entitled to redeem the same from forfeiture.

And thereupon said petitioners, with the consent of the court, paid into court to the hands of the said James S. Craig, commissioner of school lands, $3,100.87, the full amount of the taxes and interest aforesaid, and $9.00, the costs of this proceeding.

It is therefore further adjudged, ordered, and decreed that said fifteen tracts of 41,171½ acres, nine tracts of 1,000 acres each, 1,260 acres, 693 acres, 1,389½ acres, 300 acres, and 400 acres of land lying on Gauley, Cherry, Cranberry, and Williams rivers

478 and their waters have been redeemed, and that they be and are released from the said forfeiture and exonerated and released from all other former taxes and damages, if any such there be, and no sale thereof shall be made on account thereof; and the said several tracts of land are each hereby reinstated in all respects as if no such forfeiture had occurred, and the assessor of Nicholas county is ordered and directed to enter said lands in separate tracts on the land books for said county for the year 1881, in the name of Allen T. Caperton's estate, and charge the same with taxes commencing with said year 1881, all prior taxes, including the year 1880, having been paid as aforesaid.

It is further ordered that the said James S. Craig, commissioner of school lands as aforesaid, do pay over to the parties entitled thereto the said $9.00, costs of this proceeding; that out of the said $3,100.87, taxes and interest aforesaid, he retain ten per centum as and for his commission thereon, and pay the residue to the auditor of this State, as required by law.

STATE OF WEST VIRGINIA, *County of Nicholas,* } *To wit:*

I, A. F. Rader, clerk of the circuit court of Nicholas county, in the State of West Virginia, do hereby certify that the foregoing is a transcript from the records of the proceedings in said court for the redemption from forfeiture of the lands belonging to the estate of the late Allen T. Caperton as fully and completely as the same now exist among the records of the said court.

Given under my hand and seal of office, at my office, at the courthouse of said county, this 11th day of May, 1885.

A. F. RADER, *Clerk.*

Fee for record, $12.50.

479 And on another day, to wit, on the 30th day of June, 1886, the following order was made and entered of record, to wit:

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others. } In Equity.

On motion of the plaintiffs, they have leave to file their general replication to the answer of Benjamin Rich and the answer of Edward R. Wood and others to the bill and amended bills herein, which is accordingly done, and, the parties desiring and agreeing that the testimony to be taken in the cause may be orally taken and without written interrogatories, it is ordered that the clerk of this — be, and he is hereby, authorized to name the commissioners to take such testimony in the several places where it may be desirable to take the same, and which shall be taken upon reasonable notice, to be given by the respective counsel to the opposite counsel, of the time and place of taking the same, and, on motion of the defendant-, to assign the time in which the evidence shall be taken, — doth order that the complainants shall take their evidence to support their bill against the 1st day of September, 1886, and within thirty days thereafter the defendants shall take their evidence in defense, and within fifteen days thereafter the complainants shall take their evidence in reply, and, on motion of complainants, they have leave to file a complete transcript of the record of the proceedings of the circuit court of Nicholas county in relation to the redemption of the lands of A. T. Caperton, dec'd, from forfeiture, in controversy in this suit, as an exhibit with their 2nd amended and supplemental bill in this cause, which is forthwith done, subject to all proper exceptions.

480 And on another day, to wit, on the 2nd day of February, 1887, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et al.* } In Equity.

The plaintiff- this day presented and filed a copy of the record and proceedings of the circuit court of Webster county, marked Exhibit A No. 2, in relation to the forfeiture and redemption of the lands of the plaintiffs as the heirs-at-law of Allen T. Caperton, dec'd, as an exhibit with the second amended and supplemental bill and to be taken, read, and considered as part of said bill.

And on motion of the plaintiffs, by counsel, this cause is continued to and set for hearing on the 15th day of March, 1887, and each of the parties is required to file a printed brief of his points and authorities, with references to the pleadings and evidence, to facilitate the examination of the court in the decision of the cause on or before the 5th day of March next.

Exhibit "A No. 2," referred to in the foregoing order, is in words and figures as follows, to wit:

STATE OF WEST VIRGINIA, } *To wit:*
Webster County,

In the Circuit Court *Court* of said County at a Term Held at the Court-House Thereof on the 26th Day of September, 1877.

2,900 acres of A. T. Caperton land.
1,919 " " "
772 " " "
350 acres of A. T. Caperton land.
481 110 " " "
1,080 " " "
50 acres of A. T. Caperton land.
930 " " "
450 " " "

P. F. Duffy, commissioner of school lands for Webster county, this day made a report touching the several tracts of land recited above in the words and figures following:

To the Hon. John Brannon, judge of the circuit court of Webster county:

The undersigned, commissioner of school lands in and for said county, begs leave to respectfully report that a tract of two thousand nine hundred acres of land — charged in the name of A. T. Caperton without location on com'r's book, but I am informed is located between Elk and Gauley rivers in said county; that said land was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the years 1873 and 1874, and was sold by the sheriff of said county on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of $30.19, and purchased

by the sheriff for the State. The probable value of said land I estimate at 50 cents per acre; that the said tract of land is now liable to be sold for the benefit of the school fund. Your commissioner further reports that a certain tract of 1,919½ acres — charged in the name of A. T. Caperton, located on Gauley river, in said county, as per com'r's book; that said land was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the years 1873 and 1874, and was sold by the sheriff
of said county on the 5th day of October, 1875, for said taxes,
482 which, with the interest and damages then chargeable thereon,
amounted to the sum of $30.04, and purchased by the sheriff for the State. The probable value of said land I estimate at 50 cents an acre; that the said tract of 1,919½ acres of land is now liable to be sold for the benefit of the school fund.

Your com'r further reports that a certain other tract of 772 acres — charged in the name of A. T. Caperton, located on Gauley river, in Fork Lick district, in said county, as per com'r's book; that said land was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the years 1873 and 1874, and was sold by the sheriff of said county on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of $20.01, and purchased by the sheriff for the State. The probable value of said land I estimate at 50 cents per acre; that the said tract of 772 acres of land is now liable to be sold for the benefit of the school fund.

Your com'r further reports that a certain other tract of 350 acres of land — charged in the name of A. T. Caperton, located on Gauley and Williams rivers, in said county, as per com'r's book; that said land was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the years 1873 and 1874, and was sold by the sheriff of said county on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of $2.03, and purchased by the State. The probable value of said 350 acres of land I estimate at — cts. per acre. The said tract of 350 acres of land is now liable to be sold for the benefit of the school fund.

Your com'r further reports that a certain other tract of 110 acres — charged in the name of A. T. Caperton, located on Gauley and Williams rivers, in Fork Lick district, in said county, as per com'r's book;
that said land was returned delinquent for the non-payment
483 of the State, State school, county, and district taxes due
thereon for the years 1873 and 1874, and was sold by the sheriff of said county on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of $3.00, and purchased by the sheriff for the State. The probable value of said tract of 110 acres of said land I estimate at 50 cts. per acre; that the said tract of 110 acres is now liable to be sold for the benefit of the scool fund.

Your com'r further reports that a certain other tract of 1,080 acres — charged in the name of A. T. Caperton, located on Gauley and Wil-

liams rivers, in Fork Lick district, in said county, as per com'r's book ; that said land was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the years 1873 and 1874, and was sold by the sheriff of said county on the 5th day of October, 1875, for said taxes, which, with the interest and damages chargeable thereon, amounted to the sum of $14.06, and purchased by the sheriff for the State. The probable value of said tract of 1,080 acres of land I estimate at 40 cents per acre; that the said tract of 1,080 acres is now liable to be sold for the benefit of the school fund.

Your com'r further reports that a certain other tract of fifty acres — charged in the name of A. T. Caperton, located on Gauley and Williams rivers, in Fork Lick district, in said county, as per com'r's book; that said land was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the years 1873 and 1874, and was sold by the sheriff of the county on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of $1.36, and purchased by the sheriff for the State. The probable value of the said tract of 50 acres I estimate at 50 cts. per acre; that the said tract of 50 acres is now liable to be sold for the benefit of the school fund.

484 Your com'r further reports that a certain other tract of 930 acres — charged in the name of A. T. Caperton, located on Gauley and Williams rivers, in Fork Lick district, in said county, as per com'r's book; that said land was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the years 1873 and 1874, and was sold by the sheriff — the county on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of $24.88, and purchased by the sheriff for the State. The probable value of said tract of 930 acres of land I estimate at 40 cents per acre; that the said tract of 930 acres of land is now liable to be sold for the benefit of the school fund.

Your com'r further reports that a certain other tract of 450 acres — charged in the name of A. T. Caperton, located near Fork lick, in said county, as per com'r's book; that said land was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the years 1873 and 1874, and was sold by the sheriff of the county on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of $11.69, and purchased by the sheriff for the State. The probable value of said tract of 450 acres of land I estimate at $1.50 per acre. The said tract of 450 acres of land is now liable to be sold for the benefit of the school fund.

Your com'r further reports the amounts necessary to complete the redemption of said several tracts of land, computed to this day, as follows:

	No. acres.	Taxes, int., and damages to 5th Oct.	Int and damages to 26th Sept., 1877.	Total.
	2,900	$30 19	$7 15	$37 34
	1,919½	30 14	7 12	37 16
	772	20 01	4 74	24 75
	350	2 03	48	2 51
	110	3 00	71	3 71
	1,080	14 06	3 33	17 39
	50	1 36	32	1 68
485	930	24 88	5 90	30 78
	450	11 69	2 77	14 46
				169 78

All of which is respectfully submitted.

P. F. DUFFY,
Com'r for School Lands, Webster Co.

September 26th, 1877.

And thereupon E. J. Caperton, Allen Caperton, Ella Caperton, Malinda C. Patton, Harriet C. Gordon, Lelia C. Stiles, and Mary C. Braxton, heirs-at-law of A. T. Caperton, deceased, and John Echols and James F. Patton, administrators of the estate of said A. T. Caperton, deceased, who claim the right to redeem the said several tracts from the forfeiture in said report of said Duffy stated, this day filed their petition in the words and figures following:

To the Hon. John Brannon, judge of the circuit court of Webster county:

The petition of E. J. Caperton, Allen Caperton, Ella Caperton, Malinda C. Patton, Harriet C. Gordon, Lelia C. Stiles, and Mary C. Braxton, heirs-at-law of Allen T. Carpenter, dec'd, and John Echols and James F. Patton, administrators of the estate of the said Allen T. Caperton, dec'd, would respectfully represent that Allen T. Caperton, dec'd, in his lifetime was seized in fee of certain tracts of land situate and lying in the county of Webster and State of West Virginia, to wit, 2,900 acres, 1,919½ —, 772 acres, 350 acres, 110 acres, 1,080 acres, 50 acres, 930 acres, and 450 acres, to which said Caperton derived title by deed from Homer A. Holt, special com'r of the circuit court of Webster county, in the chancery suit of A. T. Caperton *vs.* The Administrator and Heirs of Austin Hollister, dec'd, formerly pending in said court.

They further represent that said several tracts of land have been returned delinquent for the non-payment of taxes for the
486 years 1873 and 1874, and were, on the 5th day of October, 1875, sold by the sheriff of said county and purchased in for the State of West Virginia, and have become liable to be resold by the com'r of school lands for said county for the benefit of the school fund. They are advised that at any time previous to an actual sale by said com'r of school lands they have a right, by and with the consent of this hon. court, to pay into this court all costs, taxes, and interest due upon said land and to have an order made by said

court releasing all former taxes due on said land and preventing any sale thereof.

They further represent that there is due for costs, taxes, and interest on said several tracts of land $169.78, as appears by the report of P. F. Duffy, com'r of school lands for Webster county, herewith filed as a part of this petition. They therefore pray that this hon. court will consent to their paying into court the said sum of $169.78, which they now tender with this petition, and an order may be entered upon the record of this court releasing said lands from all former taxes and forbidding the sale thereof by the com'r of school lands for said county.

And, as in duty bound, they will ever pray, etc.

E. J. CAPERTON.
ALLEN CAPERTON.
ELLA CAPERTON.
MALINDA C. PATTON.
HARRIET C. GORDON.
LELIA C. STILES.
MARY C. BRAXTON.
JOHN ECHOLS AND
JAMES F. PATTON,
Adm'rs of the Estate of Allen T. Caperton, Dec'd.

487 And thereupon John D. Alderson, prosecuting attorney, appeared to these proceedings and represented the interest of the State therein; and it further appearing that the said several tracts of land were returned delinquent for the non-payment of the State, State school, county, and district taxes for the years 1875 and 1876, the same are severally embraced in the list of delinquent lands delivered by the auditor to the sheriff for sale for the delinquency aforesaid for the years 1875 and 1876.

And it further appearing to the court that the said several tracts of land have been redeemed from said delinquency for said years 1875 and 1876 by payment of the several amounts of said taxes, interests, and damages to the sheriff of this county, to whom said lists had been so delivered before the day of sale thereof; and it therefore appears that no further sums of money are chargeable upon said lands to effect a redemption thereof than the amounts stated in said report of said com'r of school lands; and it further appearing that the said petitioners other than said administrators are the heirs-at-law of A. T. Caperton, dec'd, and that the said A. T. Caperton died before the title to said land vested in the State; that he died intestate, and that said petitioners who are described as heirs had at and before the title thereto vested in the State good and valid titles thereto, and the said the petitioners thereupon on this day paid into court $37.34 in redemption of the 2,900-acre tract, $37.16 in redemption of the 1,919½-acre tract, $24.75 in redemption of the 772-acre tract, $2.51 in redemption of the 350-acre tract, $3.71 in redemption of the 110-acre tract, $17.39 in redemption of the 1,080-acre tract, $1.68 in redemption of the 50-acre tract, $30.78 in redemption of the 930-acre tract, and $14.46 in redemption of the

450-acre tract, and thereupon P. F. Duffy, com'r of school lands, by direction, received the several sums of money so paid into court, and thereupon the said petitioners paid the charges of said
488 com'r for making said report and the clerk's and other costs of these proceedings—

It is therefore adjudged, ordered, and decreed that the payments aforesaid shall operate as a release of all the taxes aforesaid and a redemption of said several tracts of land from the forfeiture aforesaid; but this release and redemption shall in no way affect or impair the title to any portion of either of said tracts of land transferred to and vested in any person as provided in section 3 of article 13 of the constitution of this State. The said com'r of school lands is directed to pay the several sums of money so received by him into the treasury of this State, and make report to the auditor of the substance of these proceedings and the order of the court.

489 STATE OF WEST VIRGINIA, *Webster County,* } *ss:*

In the Circuit Court of said County, at a Term Thereof Continued and Held on the 29th Day of September, 1877.

9,330 Acres, Allen T. Caperton's Land.

P. F. Duffy, commissioner of school lands for Webster county, this day made a report touching the said tract of land, and that the same is liable to be sold for the benefit of the school fund, and which report is in the words and figures following:

To the Hon. John Brannon, judge of the circuit court of Webster county:

The undersigned, commissioner of school lands in and for said county, asks leave to report a tract of nine thousand three hundred and thirty acres of land in Webster county, charged in the name of A. T. Caperton, located on the waters of Gauley and Williams rivers, in Fork Lick district, as designated in the certificate of the auditor to the clerk of the county court of said county, is subject to
490 be sold as provided in chapter 134, acts 1872-'3. Said tract of land was returned delinquent by the sheriff of said county for the non-payment of the State, State school, county, and district taxes due thereon for the year 1874 and was sold by said sheriff on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of ($46.11) forty-six dollars and eleven cents, and purchased by said sheriff for said State. The probable value of said land I estimate at about 40 cts. per acre.

Respectfully submitted.

P. F. DUFFY,
Com'r of School Lands for W. C.

September 24th, 1877.

It is now here ordered that the said commissioner of school lands do cause a survey of the said tract of land to be made, locality, boundaries, and abuttals to be ascertained, and, when so ascertained, that he cause the said tract of land to be surveyed out into convenient parcels for sale, not exceeding in any one parcel six
491 hundred and forty acres, and that he return a fair plat and report thereof to court.

That he ascertain and report any unpaid taxes due to the State, county, or district charged or chargeable on said land up to the next term of this court, indicating the said taxes separately.

5,000 Acres, Allen T. Caperton Land.

P. F. Duffy, commissioner of school lands for Webster county, this day made a report touching the said tract of land, and that the same is liable to be sold for the benefit of the school fund, and which report is in the words and figures following:

To the Hon. John Brannon, judge of the circuit court of Webster county:

The undersigned, commissioner of school lands in and for the county of Webster, asks leave to report a tract of five thousand acres of land in Webster county, charged in the name of A. T.
492 Caperton, located on the waters of Gauley & Williams rivers, in Fork Lick district, in said county, as designated in the certificate of the auditor to the clerk of the county court of said county, is subject to be sold for the benefit of the school fund as provided in chapter 134, acts 1872–'3. Said tract was returned delinquent for the non-payment of taxes by the sheriff of said county due thereon for the year 1874 and was sold by said sheriff on the 5th day of October, 1875, for said taxes, which, with the interest, damages, &c., chargeable thereon, amounted to the sum of ($24.72) twenty-four dollars and seventy-two cents, and was purchased by said sheriff for the State. The probable value of said land I estimate at about 40c. per acre.

Respectfully submitted.

P. F. DUFFY,
Com'r School Lands for Webster Co.

September 23d, 1877.

It is now here ordered that the said com'r of school lands do cause a survey of the said tract of land to be made, locality, bound-
493 aries, and abuttals to be ascertained, and, when so ascertained, that he cause the said tract of land to be surveyed out in convenient parcels for sale, not exceeding in any one parcel 640 acres, and that he return a fair plat and report thereof to court; that he ascertain and report any unpaid taxes due to the State, county, or district charged or chargeable on said land up to the next term of this court, indicating the said taxes separately.

3,938 *Acres, A. T. Caperton Land.*

P. F. Duffy, commissioner of school lands for Webster county, this day made a report touching the said tract of land, and that the same is liable to be sold for the benefit of the school fund, and which report is in the words and figures following:

To the Hon. John Brannon, judge of the circuit court of Webster county:

494 The undersigned, commissioner of school lands in and for the county of Webster, begs leave to report he has ascertained that a tract of three thousand nine hundred and thirty-eight acres of land, located in Fork Lick district, on the waters of Gauley and Williams rivers, in said county, charged in the name of A. T. Caperton, is subject to sale for the benefit of the school fund under chapter 134, acts 1872–'3; that said tract was returned delinquent for the non-payment of taxes due thereon for the year 1874 and was sold by said sheriff on the 5th day of October, 1875, for said taxes, which, with the interest & damages then chargeable thereon, amounted to the sum of ($29.15) twenty-nine dollars and fifteen cents, and purchased by said sheriff for the State of West Virginia. The probable value of said land is 40 cts. per acre.

All of which is respectfully —.

P. F. DUFFY,
Com'r School Lands Webster Co.

September 19th, 1877.

495 It is now here ordered that the said com'r of school lands do cause a survey of the said tract of land to be made, locality, boundaries, and abuttals to be ascertained, and, when so ascertained, that he cause the said tract of land to be surveyed out in convenient parcels for sale, not exceeding in any one parcel 640 acres, and that he return a fair plat and report thereof to court; that he ascertain and report any unpaid taxes due to the State, county, or district charged or chargeable on said land up to the next term of this court, indicating the said taxes separately.

2,738 *Acres, Allen T. Caperton Lands.*

P. F. Duffy, commissioner of school lands for Webster county, this day made a report touching the said tract of land, and that the same is liable to be sold for the benefit of the school fund, and which report is in the words and figures following:

496 To the Hon. John Brannon, judge of circuit court, Webster county:

The undersigned, commissioner of school lands in and for said county, asks leave to report that he has ascertained that a tract of two thousand seven hundred and thirty-eight acres of land in Webster county, charged in the name of A. T. Caperton, located on the waters of Gauley and Williams rivers, in Fork Lick district, as

designated in the certificate of the auditor to the clerk of the county court of said county, is subject to be sold for the benefit of the school fund under chapter 134 of acts 1872–'3; that said tracts of land was returned delinquent by the sheriff of said county for the non-payment of the State, State school, county, and district taxes due thereon for the year 1874 and was sold by said sheriff on the 5th day of October, 1875, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of $11 51 cts., eleven dollars and fifty-one cents, and purchased by said sheriff for the State.

September, 1877.

P. F. DUFFY,
Com'r School Lands for W. C.

497 It is now here ordered that the said com'r of school lands do cause a survey of said tract of land to be made, locality, boundaries, and abuttals to be ascertained, and, when so ascertained, that he cause the said tract of land to be surveyed out into convenient parcels for sale, not exceeding in any one parcel 640 acres, and that he return a fair plat and report thereof to court; that he ascertain and report any unpaid taxes due to the State, county, or district charged or chargeable on said land up to the next term of this court, indicating the said taxes separately.

498 In Webster County Circuit Court, at a Term Continued and Held on the 6th Day of April, 1881.

In the Matter of ALLEN T. CAPERTON'S Tracts of 9,330, 5,000, 5,938, and 2,738 Acres of Forfeited Lands.

This day came Harrietta E. Caperton and others and filed their petition in writing as follows:

The petition of Harrietta E. Caperton, widow; Mary E. Braxton, late Mary E. Caperton, and Tamlin Braxton, her husband; E. J. Caperton; Harrietta C. Gordon, late Harrietta C. Caperton, and Wm. A. Gordon, her husband; Malinda C. Patton, late Malinda C. Caperton, and James F. Patton, her husband; Allen Caperton, Ella Caperton, Lelia C. Stiles, late Lelia C. Caperton, and Robert C. Stiles, her husband, all heirs-at-law of Allen T. Caperton, deceased.

To the Honorable Henry Brannon, judge of the circuit court of Webster county, in the State of West Virginia:

499 Your petitioners respectfully show that by patent bearing date on the 1st day *day* of September, 1851, there was granted to Douglas B. and Alexander Layne a tract of 2,738 acres of land lying on the north side of Gauley river, in Webster county, at the mouth of Straight creek; that by deed dated on the 20th day of September, 1858, the said Alexander Layne conveyed his undivided half of said tract of land to the said Douglas B. Layne, who, by deed bearing date on the 8th day of June, 1859, conveyed the whole of said tract of land to Allen T. Caperton aforesaid.

That by patent bearing date on the 1st day of February, 1858, there was granted to Austin Hollister a tract of 5,938 acres of land lying on waters of Williams river, on the "Black and Yew mountains," in the county of Webster aforesaid.

That by patent bearing date on the 1st day of November, 1855, there was granted to the said Austin Hollister a tract of land lying on waters of Gauley and Williams river-, in said county of Webster, containing by survey 9,330 acres; that the two last-named
500 tracts of land were by deed, dated on the 12th day of February, 1859, conveyed by the said Austin Hollister to the said Allen T. Caperton.

That by patent bearing date March 21st, 1795, or thereabouts, there was granted to Robert Morris a tract of 153,900 acres of land lying on Gauley, Williams, Cranberry, and Cherry rivers and some of their waters and some of the branches of Greenbrier river, in Greenbrier county, now in Greenbrier, Webster, and Nicholas counties, which tract of land, by a regular and connected chain of conveyances, became the property of one Henry Crammond, of the city of Philadelphia, who, by deed which is of record in the county of Greenbrier aforesaid, conveyed the whole of said large tract of land to John Williams, who, by his deed bearing date February 21st, 1850, conveyed 77,000 acres of said tract to the said Allen T. Caperton, a 5,000-acre lot of which, lying on Williams and Gauley waters, together with the tracts of 2,738, 5,938, and 9,330 acres, were by two deeds which are of record in the
501 county of Webster, one by Wm. H. McFarland and Allen T. Caperton and wives, and the other by said Allen T. Caperton and wife, conveyed to the Chesapeake and Ohio Railroad Company, which company, by its two deeds bearing date on the 20th day of February, 1874, reconveyed the said tracts of 5,000, 2,738, 5,938, and 9,330 acres, with other lands, to the said Allen T. Caperton. Certified copies of said last two deeds are herewith filed and exhibited as part of this petition, marked "A" & "B."

That the said four tracts of land are an estate in fee of your petitioners, derived by descent from and through the said Allen T. Caperton, deceased, as his heirs-at-law.

That it appears by the reports of P. F. Duffy, commissioner of school lands for the said county of Webster, herewith filed, that the said tracts of land are delinquent and forfeited for the non-payment of the taxes as assessed and due for the year 1874, the said tract of 5,938 acres being separate in said report as 3,938 acres, 2,000
502 acres less than is actually contained in said tract.

That your petitioners or part of them are married women and infants under disability and claim the benefit as to interest of section 30 of chapter 117 of the acts of 1872–'3.

Your petitioners therefore pray that this honorable court may consent to their redemption of said four tracts of land by paying into court all costs, taxes, and interest due thereon at this time; that no sale thereof shall be made; that the commissioner of school lands aforesaid be required to report to this court the amount of said costs, taxes, and interest now due on said land, and that the court may

make in relation thereto the order provided for in section thirteen of chapter 134 of the acts of 1872–'3; and *is* in duty *duty* bound, &c.

HARRIETTE E. CAPERTON.
TAMLIN BRAXTON.
MARY E. BRAXTON.
503 E. J. CAPERTON.
WM. A. GORDON.
JAMES F. PATTON.
MALINDA C. PATTON.
ALLEN CAPERTON.
ELLA CAPERTON.
ROBERT STILES.
LELIA C. STILES.

And therefore the court is of opinion and doth adjudge and decree that the said petitioners have lawful right to redeem the said tracts of land in said petition mentioned from forfeiture and sale, and in order to ascertain the amounts proper to be paid by them to effect such redemption it is ordered that the commissioner of school lands for Webster county do ascertain and report to this court the sum of money proper to be paid in redemption of the said tracts of land.

504 At another day, to wit, at a term of the said circuit court of Webster county continued and held at the court-house thereof on the 5th day of August, 1881.

In the Matter of ALLEN T. CAPERTON's Tracts of 9,330, 5,938, 2,738, and 500 Acres of Forfeited Lands. } On a Petition for Redemption.

This day came Harrietta E. Caperton and others, heirs-at-law of Allen T. Caperton, dec'd, by their counsel, and filed their supplemental petition; also came P. F. Duffy, commissioner of school lands, and filed his report of the forfeiture of 500 acres of land in the name of the said A. T. Caperton, and also his report showing the aggregate of taxes and interest due on the 9,330, 5,938, 2,738 acres in the original petition mentioned and the sums necessary to redeem the aforesaid five tracts of land, which amended and supplemental petition, report upon the forfeiture of the 500 acres of land, and report of the amount necessary to redeem the aforesaid five tracts of land are in the words and figures following, to wit:

First. The Amended and Supplemental Petition.

The amended and supplemental petition of Harrietta E. Caperton, Tamlin Braxton and Mary E., his wife; E. J. Caperton; William A. Gordon and Harrietta C., his wife; James F. Patton and Malinda C., his wife; Allen Caperton, Ella Caperton, and Robert C. Stiles and Lelia C., his wife, filed in the circuit court of Webster county, in the State of West Virginia.

Your petitioners respectfully represent that heretofore they filed their original petition in said court for the purpose of redeeming

from forfeiture and sale the following tracts of land, to wit, 9,330, 5,938, 5,000, and 2,738 acres, as will appear from said petition, which is here made a part of this amended and supplemental petition.

505 That in said original petition errors were committed in stating the derivation of the titles of the 5,000 and the 2,738 acres of land therein mentioned; that the true derivation of the said titles is as follows and not as stated in said petition, to wit: That said tract of 5,000 acres was granted by the Commonwealth of Virginia to Abner Cloud by grant dated March 10th, 1790; that it was forfeited and sold as forfeited and delinquent land by proceedings in the circuit court of Nicholas county in 1842, and was purchased by John Williams, by whom it was conveyed by the commissioner of delinquent and forfeited lands for said county of Nicholas, and the said Williams, by deed dated February 21st, 1850, conveyed the same to Allen T. Caperton, and that the said 2,738 acres *was* granted by the Commonwealth of Virginia to Douglas B. and Alexander C. Lane by grant dated September 1st, 1851, and that by deed dated March 18th, 1856, and duly recorded in Randolph county, the said Alexander C. Lane conveyed his moiety of said tract of land to the said Douglas B. Lane, who, by deed dated April 12th, 1859, conveyed the whole of said 2,738 acres to the said Allen T. Caperton.

That, in addition to the matters mentioned in their said original petition, your petitioners here state that there was granted by the Commonwealth of Virginia, by grant dated on the 1st day of July, 1851, to the said Allen T. Caperton a tract of 500 acres of land lying in Nicholas county (now Webster), on the dividing ridge between Gauley and Williams rivers, which tract was regularly on the assessor's land book for Webster county in the year 1878, was returned delinquent for the non-payment of taxes for said year in the name of said Caperton, and was on the 25th day of November, 1879, sold by the sheriff of said county for said taxes and purchased by him on behalf of the State, as will more fully appear from the report of P. F. Duffy, commissioner of school lands, herewith filed as part of this petition, marked A.

506 The title papers for said 500-acre tract, and also for the several tracts mentioned in said original petition, are here presented for the inspection and examination of the court.

That in the month of July, 1876, the said Allen T. Caperton departed this life intestate, leaving a widow, the petitioner Harrietta E. Caperton, and the following children, to wit: The petitioners Mary E. Braxton, E. J. Caperton, Harrietta C. Gordon, Malinda C. Patton, Allen Caperton, Ella Caperton, and Lelia C. Stiles, all of whom are still living and upon whom the legal title to the aforesaid several tracts of land devolved as such children and heirs-at-law of the said A. T. Caperton, deceased.

That your petitioners are advised and verily believe that there is no person or persons in condition to take the benefit of the forfeiture of the aforesaid lands, or any part thereof, under the provisions of section three, article thirteen, of the constitution of this State, and that they are entitled to redeem the same in the manner

provided by the thirteenth section of chapter one hundred and thirty-four of the acts of 1872–'3 of this State.

Your petitioners therefore pray—

That the relief asked for in the original petition may be granted.

That they be allowed to pay into court all the taxes charged and chargeable against said lands, with legal interest due thereon, and that upon the payment of said taxes and interest, with the costs of this proceeding, an order may be entered releasing said lands from the forfeiture aforesaid and restoring the title thereto to your petitioners.

And that they may have such other, further, and general relief as they are entitled to in the premises.

HARRIETTA E. CAPERTON ET ALS.,
Petitioners, by Counsel.

A. C. SNYDER,
Sol. for Petitioners.

507 To the Hon. Henry Brannon, judge of the circuit court for Webster:

The undersigned, commissioner of school lands in and for said county, beg- leave to respectfully report that a tract of five hundred acres of land charged in the name of A. T. Caperton, located on the waters of Gauley and Williams rivers, in said county, was returned delinquent for the non-payment of the State, State school, county, and district taxes due thereon for the year 1878 and sold by the sheriff of said county on the 25th day of November, 1879, for said taxes, which, with the interest and damages then chargeable thereon, amounted to the sum of seven dollars and fifty cents, and was purchased at said sale by the said sheriff for the State, and that the same is now liable to be sold for the benefit of the school *of the school* fund.

The probable value of said land I estimate at 50 cents per acre.

Respectfully submitted.

P. F. DUFFY,
Com'r School Lands, Webster Co.

To the circuit court of Webster county, in the State of West Virginia:

The undersigned, commissioner of school lands for Webster county, in pursuance of an order made at the April term, 1881, of said court, upon the petition of Harrietta E. Caperton and others, heirs-at-law of Allen T. Caperton, deceased, respectfully reports—

That he has carefully examined the records and made calculation of the taxes and interest charged and chargeable against the lands in said petition and order mentioned for the years 1874, 1875, 1876, 1877, 1878, 1879, and 1880, and that he ascertains the aggregate of the taxes and interest calculated at the rate of twelve per centum on the said several tracts of land for the years aforesaid to amount on the 5th day of August, 1881, to the sums following, to wit:

508	The 2,738-acre tract	$201 60
	" 5,000 " "	457 30
	The 9,330-acre tract	682 33
	" 5,938 " "	444 59
		$1,785 82

At the request of the petitioners, your commissioner reports the taxes charged and chargeable on a tract of 500 acres of land assessed in the name of A. T. Caperton and fully described in an amended petition about to be filed in said court by said petitioners and is the same land mentioned in your commissioner's report marked Exhibit "A," filed with this report.

That he has examined the records and carefully calculated the taxes and interest thereon charged and chargeable against said tract of land for the years 1878, 1879, and 1880 and ascertains the same to be on the 5th day of August, 1881, in the aggregate, $18.69.

Restatement.

On the 2,738, 5,000, 9,330, and 5,938	$1,785 82
" " 500-acre tract	18 69
Grand total August 5th, 1881	$1,804 51

Your commissioner therefore reports that the sum necessary to redeem the aforesaid five several tracts of land is $1,804.51 as of the 5th day of August, 1881.

Respectfully submitted.

P. F. DUFFY,
Com'r School Lands, Webster Co.

August 4th, 1881.

And thereupon this matter came on to be heard upon the petition, amended and supplemental petition, and the report of P. F. Duffy, commissioner of school lands for Webster county aforesaid, to which there are no exceptions, and argued by petitioners' counsel.

509 Upon consideration whereof it is adjudged, ordered, and decreed that said reports be, and the same are hereby, approved and confirmed.

And the petitioners having exhibited to the court their title papers showing that they have title to each of the five several tracts of land mentioned in their petition and amended petition aforesaid, regularly derived from the Commonwealth of Virginia, and the court, being of opinion that the petitioners have a good and valid title to said lands, and it not appearing that there is any person in condition to take the benefit of the forfeiture thereof, doth consent and order that petitioners may redeem said lands from forfeiture.

And thereupon petitioners, with the consent of the court, paid into *to* the hands of the said Duffy, commissioner of school lands,

$1,804.51, being the amount of taxes and interest due on said lands at this date, and $4.50, costs of this proceeding.

It is therefore further adjudged, ordered, and decreed that said several tracts of 2,738, 5,000, 9,330, 5,938, and 500 acres of land have been redeemed, and that they be and stand released from said forfeiture and exonerated and released from all other former taxes and damages, if any such there be, and no sale thereof shall be made on account thereof, and said several tracts of land are hereby reinstated and directed to be entered and charged on the land books of said county of Webster, commencing with the year 1881, in the names of the heirs-at-law of said Allen T. Caperton, deceased.

At another time, to wit, at a term of the said circuit court of Webster county continued and held at the court-house thereof on the 12th day of November, 1881.

In the Matter of ALLEN T. CAPERTON'S Tracts of 9,330, 5,000, 5,938, 2,738, and 500 Acres Forfeited Lands.

It is ordered that P. F. Duffy, commissioner of school lands for Webster county, do pay into the treasury of this State for the
510 benefit of the school fund the sum of one thousand eight hundred and four dollars and fifty-one cents, less a commission of ten per cent. which is hereby allowed him, which sum was paid into his hands in this proceeding in redemption of said lands on the 5th day of August, 1881, and that he pay B. C. Conrad the $4.50 then paid into his hands for costs.

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, B. C. Conrad, clerk of the circuit court of said county of Webster, do certify that the foregoing transcript contains true copies of all reports filed by the commissioner of school lands, petitions of A. T. Caperton's heirs to redeem the lands forfeited in the name of A. T. Caperton, and all orders and proceedings had and entered of record therein shown by the records and files of the said court.

Given under my hand and the official seal of the said
[SEAL.] circuit court of Webster county this 6th day of January, 1887.

B. C. CONRAD, *Clerk.*

Fee for record, 9,600 words at $1.00 per M. words	9 60
Certificate and attaching imp. court seal	50
	$10 10

And on another day, to wit, on the 15th day of March, 1887, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Equity.

This day the defendants filed a stipulation and agreement
511 signed by Caleb Boggess, Esquire, their counsel in this cause, for them, which is marked "Exhibit C. B." and is made part of the record in this cause.

"EXHIBIT C. B."

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others. } In Equity.

In the Circuit Court of the United States for the District of West Virginia.

It is hereby stipulated and agreed that on the original deed from Robert Morris and wife to William Crammond, bearing date on the 13th day of March, 1797, written on parchment, of which Exhibit No. 35 filed with plaintiffs' bill is an authenticated copy from the record as it purports to be; also that on the back or opposite side of same piece of parchment on which said deed is written there is written what purports to be a deed from William Crammond and wife to Thomas Astley, bearing date on the 28th day of October, 1814, of which said writing the Exhibit No. 36, filed with plaintiffs' bill, is a copy.

CALEB BOGGESS,
Counsel for the Def'ts.

29th Jan'y, 1887.

And on another day, to wit, on the 12th day of April, 1887, the following order was made and entered of record, to wit:

512 TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Equity.

This day came the parties, by their attorneys, and there appearing to have been a misunderstanding between the counsel as to the taking and retaking of the depositions herein, the counsel for the plaintiffs insisting that all exceptions taken by defendants to the plaintiffs' depositions in this cause had been waived by the counsel for the defendants and which was denied by the counsel for the defendants, therefore, on motion of the plaintiffs, by their counsel, it is ordered that the plaintiffs have two months in which to retake such of their depositions herein as they may be advised to retake and to take the depositions of such other witnesses as they may choose to take, and that the defendants have thirty days thereafter to take the depositions of such witnesses as they choose to take, and that the plaintiffs have ten days thereafter to take depositions in rebuttal of such

depositions as the defendants may take, and the depositions so taken may be read upon the hearing of this cause without reference to the filing of the same.

And on the same day, to wit, on the 12th day of April, 1887, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*
} In Equity.

On motion of the plaintiffs, by James H. Ferguson, Esquire, their counsel and attorney, it is ordered by the court that E. M. Blanchard, the notary public who took and certified the depositions of Albert Owens, a witness on behalf of the plaintiff- in this suit, taken at the office of E. & E. M. Blanchard, in the borough of Bellefonte, in the county of Centre, in the State of Pennsylvania, on the 25th day of April, 1884, have leave to amend his certificate to the said deposition so as to make the same conform to the laws of the
513 United States and the rules of the Supreme Court of the United States in reference thereto.

And on their further motion it is ordered by the court that John Crunkshank, the United States commissioner who took and certified the deposition of James Gilliland, a witness for the plaintiff- in this suit, taken at the office of Gordon & Gordon, No. 330 Four-and-one-half street, Washington city, D. C., on the 22nd day of April, 1884, have leave to amend his certificate to said deposition so as to make the same conform to the laws of the United States and the rules of the Supreme Court of the United States in reference thereto.

And on another day, to wit, on the 16th day of May, 1887, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*
} In Equity.

On motion of the plaintiff-, by James H. Ferguson, their counsel and attorney, it is ordered and decreed that Joseph A. Jones be, and he is hereby, appointed an examiner to take and certify the evidence of such witnesses as may be produced before him by the parties or either of them in this cause in pursuance of equity rule sixty-seven as amended prescribed by the Supreme Court of the United States.

And on another day, to wit, on the 8th day of July, 1887, the following order was made and entered of record, to wit:

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others.
} In Equity.

The defendants, Thornton Conrow and Randolph Wood, in this cause having died pending the same, the plaintiff- tendered and asked

leave to file a bill of revivor against S. Morris Woln and Howard F. Conrow, the administrators *de bonis non* and trustees of the
514 estate of the said Thornton Conrow, deceased, and -gainst the children, heirs-at-law, and devisees of the said Thornton Conrow, deceased, named in said bill and against the heirs-at-law of the said Randolph Wood, deceased, named in said bill, which leave is granted, and the same is now filed accordingly; and, on motion of the plaintiff-, process is awarded against the said administrators *de bonis non* and trustees and the said children, heirs-at-law, and devisees of Thornton Conrow, deceased, and against the said heirs-at-law of the said Randolph Wood, deceased, according to the prayer of the said bill, returnable to the next August rules of this court.

The said plaintiffs also this day filed their petition, supported by the affidavit of James H. Ferguson, their solicitor and counsel, praying that the order entered in this cause at the last term of this court fixing the time in which the evidence in this cause should be taken and completed be set aside; and it appearing to the court from said petition and affidavit that said order was prematurely and improperly entered at a time when the cause was not at issue as to several of the parties in interest therein, it is therefore ordered and adjudged by the court that the said order so entered at the last term of this court fixing a time for taking and completing the evidence in this cause be, and the same is hereby, vacated and set aside.

The bill of revivor, petition, and affidavit referred to in the foregoing order are in the words and figures as follows, to wit:

515 In the Circuit Court of the United States in and for the District of West Virginia, Sitting at Parkersburg, in said District.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*
} In Chancery.

To the hon. the judges of the circuit court of the United States in and for the district of West Virginia:

Your orators, Tamlin Braxton and Mary E., his wife, late Mary E. Caperton; William A. Gordon and Harrietta C., his wife, late Harrietta C. Caperton; Malinda C. Patton, widow of James H. Patton, deceased, and late Malinda C. Caperton; Robert Stiles and Lelia C., his wife, late Lelia C. Caperton; E. J. Caperton, Allen Caperton, and Ellen Caperton, citizens and inhabitants of the State of West Virginia, bring this their bill of revivor and supplement against S. Morris Waln and Howard F. Conrow, administrator- *de bonis non* and trustees of the estate of Thornton Conrow, deceased, and William Henry Conrow, Anna Alida Conrow, Alfred Thornton Conrow, Sarah Chew, Samuel Twomey, Alice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, children, heirs-at-law, and devisees of Thornton Conrow, deceased, all of whom are citizens and inhabitants of the State of Pennsyl-

vania and none of them are citizens and inhabitants of the State of West Virginia, and Walter Wood, Richard Wood, and Edward R. Wood, who are the only heirs-at-law of Randolph Wood, deceased, all of whom are citizens and inhabitants of the State of Pennsylvania and are not citizens or inhabitants of the State of West Virginia.

And thereupon your orators complain and say that they filed their original bill in this cause in the circuit court of Webster county, in the State of West Virginia, against the defendants therein named, to wit, Benjamin Rich, Thornton Conrow,
516 Walter Wood, Richard Wood, Edward R. Wood, Randolph Wood, and others, praying, among other things, that certain deeds of conveyance of the real estate therein mentioned and which is also mentioned and described in said bill, made and executed by the recorder of the said county of Webster and by the clerk of the county court of the said county of Webster to the defendant Benjamin Rich and others, and under and by virtue of which said deed the said Thornton Conrow, Walter Wood, Richard Wood, Edward R. Wood, and Randolph Wood claimed to be owners in fee of a portion of the real estate thereby conveyed, be set aside as fraudulent and void and as a cloud upon the title of your orators to the same land under a title in fee simple superior to that of said defendants thereto; that the said cause was removed from the said State court into your honor's said court and therein docketed for trial and is still pending and undetermined therein, and that since such removal your orators have filed two amended and supplemental bills therein, in which they pray for the same relief as in their said original bill.

And your orators further complain and say that since the commencement of this suit the said Thornton Conrow has departed this life, leaving a last will and testament, wherein he appointed his son, William Henry Conrow, and Burtis Barber the executors thereof and trustees of all his estate, real and personal, and that the said Burtis Barber alone qualified as such executor and trustee, and that afterward, *on* or about the month of June, 1884, the said Burtis Barber was removed as such executor and trustee and his letters testamentary revoked by a court of competent jurisdiction sitting in the city and county of Philadelphia, in the State of Pennsylvania, to wit, by the orphans' court of said county, as appears by the extracts from the record of said court, duly certified, which are herewith filed as part of this bill as Exhibits "A & B" and prayed to be read and considered as such. A duly certified — of the
517 said last will and testament of said Thornton Conrow, deceased, is also herewith filed as part of this bill, marked "Exhibit C," and prayed to be read and considered as such.

That, as also appears by said records, the said S. Morris Woln and Howard F. Conrow were in due form of law appointed as administrators *de bonis non* and trustees of the estate of the said Thornton Conrow, deceased, in the room and stead of the said Burtis Barber, removed, and the said Woln and Conrow have qualified and are now acting as such administrators and trustees; that the said Thornton Conrow died without having appeared in this suit and

without having either plead, answered, or demurred to either of the said bills filed herein, and that his said executor and trustee, Burtis Barber, never demurred, answered, or plead to either of the said bills filed herein, nor has the said S. Morris Woln and Howard F. Conrow, the present personal representatives of the said Thornton Conrow and trustees of his estate, in any way appeared, plead, demurred, or answered to the said bills or either of them.

And your orators further complain and say that during the pendency of this suit the defendant Randolph Wood has departed this life, leaving as his only heirs-at-law the said defendants, Walter Wood, Richard Wood, and Edward R. Wood, and that said Randolph Wood died without having appeared, plead, demurred, or answered to either of the said bills herein, and that the said heirs-at-law have failed to appear, plead, demur, or answer as such to either of the said bills.

And your orators are advised that this suit having abated as to the said Thornton Conrow and Randolph Wood, and the said Burtis Barber having been removed as aforesaid as the executor and trustee of the last will and testament and estate of said Thornton Conrow, deceased, and the said S. Morris Woln and Howard F. Conrow having been appointed and qualified as the administrators *de*
518 *bonis non* and trustees of the estate of said Thornton Conrow, deceased, they are entitled to have the same revived against the said administrators *de bonis non* and trustees and the said heirs-at-law and devisees of said Thornton Conrow, deceased, and that they are entitled to have the same revived against the said heirs-at-law of said Randolph Wood, deceased, and restored to the same condition it was at the death of the said Thornton Conrow and Randolph Wood.

To the end, therefore, that the said S. Morris Woln and Howard F. Conrow, as such administrators *de bonis non* and trustees as aforesaid, may appear and answer the said original and first and second amended bills, as well as this bill, and all and singular the allegations of each of said bills, and that the said children, heirs-at-law, and devisees of the said Thornton Conrow, deceased, and the said heirs-at-law of the said Randolph Wood, deceased, may answer to the said bills and each of them and all and singular the allegations of each of said bills, your orators pray that this suit be revived against the said administrators *de bonis non* and trustees of the estate of Thornton Conrow, deceased, and against the said children, heirs-at-law, and devisees of said Thornton Conrow, deceased, and against the said heirs-at-law of Randolph Wood, deceased; and they further pray your honors to grant them the writ of subpœna against the said S. Morris Woln and Howard F. Conrow, administrators *de bonis non* and trustees of the estate of the said Thornton Conrow, dec'd, and William Henry Conrow, Anna Alida Conrow, Alfred Thornton Conrow, Sarah Chew, Samuel Twomey, Alice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, children, heirs-at-law, and devisees of Thornton Conrow, deceased, and Walter Wood, Richard Wood, and Edward R. Wood, heirs-at-law of Randolph Wood,

deceased, commanding them and each and every of them to appear in this court to answer the premises and to show cause, if any
519 they or either of them have, why this suit should not be revived against them and each of them as prayed for.

And they will ever pray, etc.

(Signed) TAMLIN BRAXTON AND OTHERS,
Plaintiffs.

JAMES H. FERGUSON,
Solicitor for Plaintiffs.

520 *Petition.*

In the Circuit Court of the United States in and for the District of West Virginia.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*
} In Equity.

To the hon. the judges of said court:

Your petitioners, the above-named plaintiffs, respectfully show to your honors that at the last term of your court they applied for and obtained an order fixing the time in which the evidence in this cause should be taken and completed; that at the time they obtained said order they, as well as their counsel in the case, were ignorant of the facts stated in the annexed affidavit of their said counsel, which affidavit they make part of this petition and ask that the same be taken and read as such. Your petitioners are now advised that in view of the facts stated in said affidavit the said order was prematurely and improperly made and entered, and they therefore pray that the same may be vacated and set aside.

And they will ever pray, etc.

(Signed) TAMLIN BRAXTON AND OTHERS,
Petitioners.

JAMES H. FERGUSON, *Sol.*

521 *Affidavit.*

DISTRICT OF WEST VIRGINIA, *Wood County,* } *To wit:*

In the Circuit Court of the United States in and for the District of West Virginia.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH and Others.
} In Equity.

James H. Ferguson, being duly sworn, says that he is the solicitor and counsel of the plaintiffs in the above-entitled suit; that the defendants Abram Waltman, Ferdinand F. Sharp, and D. S. Robinson have never been served with process in said suit and have not nor has either of them in any way appeared therein and plead, de-

murred, or answered to the plaintiffs' bills or any of them filed therein, and that neither of them *are* — inhabitants of or found within the State and district of West Virginia, and affiant has no knowledge or information where they or either of them can be found.

Affiant further says that he has learned since the last term of this court that Burtis Barber, who, on his own motion, was made a defendant to this suit and obtained leave to answer herein, was removed by the orphans' court of the county of Philadelphia, Pennsylvania, from his position as executor and trustee of the last will and testament of Thornton Conrow, deceased, in the year 1884, and that the said Barber never answered, plead, or demurred to either of the bills of the plaintiffs filed in this cause. Affiant has further learned that in the year 1884 S. Morris Waln and Howard F. Conrow were by the same court appointed administrators *de bonis non* and trustees of the estate of Thornton Conrow, dec'd, in the room and stead of said Burtis Barber, and that in ignorance of all these facts and upon the representation of the counsel for the defendants, made at a former term, that he had filed an answer for all the defendants who claimed an interest in the real estate in contro-
522 versy in this suit, he applied for and obtained the order made at said last term fixing the time in whi h the evidence in this cause should be taken and completed. Affiant now finds that at the time said order was made this cause was not at issue as to the defendants Waltman, Sharp, and Robinson nor as to the said executors and trustees of Thornton Conrow, deceased, and that the said administrators *de bonis non* and the heirs-at-law and devisees of said Thornton Conrow, deceased, are not as yet parties to this suit, and he is now proceeding by bill of revivor to make them such, and he makes this affidavit for the purpose of having the said order fixing the time for taking and completing the evidence in this cause set aside as having been prematurely and improperly made and entered.

(Signed) JAMES H. FERGUSON.

Subscribed and sworn to before me this 8th day of July, 1887.

(Signed) L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

523 The will of Thornton Conrow, deceased, is marked "Exhibit C" and is in words and figures as follows, to wit:

"O. C."

Estate of THORNTON CONROW, Dec'd.

And now, June 7th, 1884, it being agreed by the respondent, Burtis Barber, that he is insolvent and unable at present to pay his liabilities, it is ordered for that reason and by consent of said Burtis Barber that he be, and hereby is, discharged from his office as executor and trustee under the will of Thornton Conrow, deceased,

and letters testamentary granted to him are revoked, costs of proceeding to be paid by respondent.

WM. B. HANNA.

Estate of THORNTON CONROW, Dec'd.

And now, this 21st day of June, A. D. 1884, the prayer of the foregoing petition is granted, and it is ordered and decreed that the said S. Morris Waln, Esq., and Howard F. Conrow be, and are hereby, appointed trustees of the estate of Burtis Barber, removed, and ordered to enter security in the amount of $50,000.

WM. B. HANNA.

Estate of THORNTON CONROW, Dec'd.

And now, on the 7th day of July, A. D. 1884, upon reading the within supplemental petition, it is ordered and decreed that the register of wills of Philadelphia county be, and is hereby, authorized and empowered to appoint S. Morris Waln, Esq., and Howard F. Conrow administrators *d. b. n.* of the estate of Thornton Conrow, dec'd, in the place of Burtis Barber, removed, and the said appointees are ordered to enter security before the register in the sum of $25,000.

WM. B. HANNA.

524 STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I have compared the within copy with the original, and I hereby certify the foregoing to be a true and accurate copy of the decrees made at an orphans' court held on the 7th day of June, A. D. 1884, 21st day of June, A. D. 1884, and the 7th day of July, A. D. 1884, in the matter of the estate of Thornton Conrow, dec'd, as therein set forth, as the same appears of record in the office of the clerk of the orphans' court.

[SEAL.] Witness my hand and seal of said court this 27th day of June, A. D. 1887.

W. B. KINSEY,
Clerk of Orphans' Court.

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, William B. Hanna, president judge of the orphans' court of Philadelphia county, do certify that the foregoing certificate and attestation made by William B. Kinsey, Esquire, register of wills and *ex officio* clerk of said orphans' court, whose name is thereto subscribed and seal of said court affixed, are in due form and made by the proper officer.

In testimony whereof I hereunto set my hand this the 27th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

WM. B HANNA, [SEAL.]
President Judge.

525 STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, William B. Kinsey, Esq., register of wills and *ex officio* clerk of the orphans' court of Philadelphia county, do certify that the Honorable William B. Hanna, by whom the foregoing attestation was made and who has thereunto subscribed his name, was at the time of the making thereof and still is president judge of the orphans' court of Philadelphia county, duly commissioned and sworn, to all whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of the said court this the 27th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

WILLIAM B. KINSEY,
Register of Wills and ex Officio Clerk of the Orphans' Court.

April Term, 1882.

Estate of THORNTON CONROW, Dec'd. 419.

S. M. Waln. June 1st, 1882.—Petition for approval of appraisement under act of 1851, &c., filed.

July 1, 1882.—It is ordered that Joseph D. Conrow, guardian of Alfred T. Conrow, retain the property of the value of $163.50 referred to in the appraisement, and also $136.50 in cash—in all, $300—for his use.

Nov. 26, 1883.—Acc't of B. Barber, ex'r, filed.

March 10, 1884.—See petition. It is ordered and decreed that a citation issue directed to Burtis Barber, ex'r and trustee, to show cause why he should not be removed from said office of executor and *and* trustee under the will of said decedent, ret'ble March 22nd, 1884.

526

Waln. March 15, 1884.—Proof of service of citation filed.

Sloan. March 21, 1884.—Answer of B. Barber filed.

March 28, 1884.—Replication filed.

March 29, 1884.—The court appoint John D. Lewis examiner to take testimony and report the same to the court.

Sloan. April 29, 1884.—Restatement of executor's acc't and adjudication filed.

Eo die.—Stenographer's notes filed.

S. M. Waln. May 9, 1884.—Rule entered for commission to Richmond, Ind., and interrogatories filed.

Id. May 10, 1884.—Exceptions on part of Jas. D. and Anna A. Conrow to adjudication filed.

Sloan. May 17.—Exceptions of executor filed.

Eo die.—The court grant a rule on trustee to show cause why he should not be ordered to close his testimony before the examiner on or before the 17th June, 1884.

Sloan. May 26, 1884.—Ex. to interrogatories for commission to Richmond, Ind., filed.

Eo die.—See petition. Citation awarded directed to Burtis Barber to show cause why he should not pay to Anna Alida Conrow a monthly allowance sufficient for her maintenance and support, re't'ble on 7th day of June, 1884.

Waln. June 7th, 1884.—It being agreed by the respondent, Burtis Barber, that he is insolvent and unable at present to pay his liabilities, it is ordered for that reason and by consent of said Burtis Barber that he be, and hereby is, discharged from his office as executor and trustee under the will of said decedent and letters testamentary granted to him are revoked, costs of proceeding to be paid by respondent.

1884, June 19.—Report of examiner filed.

527 1884, June 21.—Que. petition. It is ordered and decreed that S. Morris Waln and Howard F. Conrow be appointed trustees of the above Van Dusen Blight estate and enter security in sum of $50,000.

1884, July 7.—Que. petition. It is ordered and decreed that the register be authorized and empowered to appoint S. Morris Waln and Howard F. Conrow adm'r- *d. b. n.* of the estate of Thornton Conrow, dec'd, in place of Burtis Barber, removed, and said appointees are ordered to enter security before the register in sum of $25,000.

1884, July 19.—Ordered and decreed that, of the exceptions filed by accountant, the first is in part sustained, the third and eighth are sustained, and the remaining exceptions are dismissed; that the exceptions filed by J. D. Conrow, guardian, and Anna A. Conrow are dismissed and the adjudication is modified accordingly.

April 18, 1885.—Que. petition. It is ordered and decreed that S. Morris Waln and H. F. Conrow, adm'rs *d. b. n. c. t. a.* and trustees, and Charles Lewis and Anna Conrow, his wife, be directed and empowered to create a new mortgage of $7,000 on premises No. 1912 Spring Garden St., in the place of the mortgage that was satisfied of record April 4, 1885.

Blight. Nov. 30, 1885.—Acc't of B. Barber, exc'r, filed.

Dec. 17, 1885.—Adjudication filed.

April 9th, 1887.—Que. petition. Citation awarded directed to S. Morris Waln and Howard F. Conrow, adm'rs *d. b. n. c. t. a.* of Thomas Conrow, dec'd.

M. H. Todd to file an account, &c., before April 23, 1887.

C. P. Blight. April 21st.—Answer filed.

May 16, 1887.—The court order and decree that said administrators file their account on or before June 1st, 1887.

June 27, 1887.—Acc't of administrators, &c., filed.

STATE OF PENNSYLVANIA, } *ss*:
Philadelphia County, }

I hereby certify the foregoing to be a true and accurate
528 copy of the original docket entries made in the estate of Thomas Conrow, dec'd, from June 1st, 1882, to June 27th,

1887, inclusive, as the same appears of record in the office of the clerk of the orphans' court of said county.

[SEAL.] Witness my hand and seal of said court this 27th day of June, A. D. 1887.

HOWARD A. BEAR,
4th Ass't Clerk of Orphans' Court.

Be it remembered that I, Thornton Conrow, merchant, of the city of Philadelphia, being of a sound mind, memory and understanding, do publish and declare this my last will and testament hereby revoking and making void all former wills by me at any time made.

Item 1. I direct that my funeral be conducted in a plain and becoming manner.

Item 2. I direct that all my debts and funeral expenses be paid as soon as practicable out of the first moneys that may come into the hands of my executors.

Item 3. I give and bequeath until the final settlement of my estate, direct my executors to pay annually unto Sarah Chew, daughter of William Brown, deceased, if she so long lives, the sum of one hundred dollars $100. in semi-annual installments of fifty dollars each on the first days of January and July *successfully;* in the event of her surviving till the final settlement of my estate. I hereby give and bequeath, and direct my executors to pay to Samuel Twomey, son of Sarah Chew, of Hammenton, N. J., the sum of five hundred dollars in cash and in lieu of (Thornton Conrow.)
529 the annuity in this item to be held in trust for the benefit of Sarah Chew during her life, and the remainder, after her death, to the said Samuel Twomey and his heirs absolutely.

Item 4. I give and bequeath, and direct my executors to pay Alice Roach of the final settlement of my estate, should she then be living, the sum of two hundred and fifty dollars. I also give and bequeath, and direct my executors to pay the said Alice Roach (long of my household) an annuity of fifty dollars from the time of my decease during and until the final settlement of my estate should she so long live.

Item 5. I give and bequeath unto my great nephew, Thornton Conrow Lippincott, son of Darling Conrow Lippincott, the sum of one hundred ($100) dollars, and direct my executors, to pay the same without interest when my son Alford Thornton shall arrive at the age of twenty-five years, if he, Thornton Conrow Lippincott, should so long live, if not living, to then merge into my estate.

Item 6. I give and bequeath and direct my executors to pay Thornton Conrow, son of Joseph B. Hancock, upon his arriving at the age of twenty-five years the sum of fifty $50.00 dollars, if he should not so long live then the amount is to merge into my estate. (Thornton Conrow.)

Item 7. I give and bequeath, and direct my executors to pay to my niece Lydia L. Green, at the final settlement of my estate, should she then be living, the sum of fifteen hundred $1,500 dollars. I also give and bequeath and direct my executors to pay the said

Lydia A. Green an annuity of ninety dollars from the time of my decease, during and until the final settlement of my estate, should she so long live.

530 Item 8. I give and bequeath unto Darling Conrow Lippincott one-fourth of whatever sum of money he may be owing me or my estate at the time of my decease, hereby releasing and discharging him from the one-fourth part of the debt due (or unpaid) from him at my decease, and I further order and direct that the said Darling Conrow Lippincott shall and be required to pay annually the sum of one thousand dollars on the principal of the remaining three-fourths of said debt, that he shall also pay annually interest on the three-fourths of said debt at the rate of four (4) per cent. per annum in the event of there being an unpaid balance due from said Darling Conrow Lippincott at the time of final settlement. I direct that the same be divided into three equal parts and notes given by said Lippincott in such separate amounts adding interest at the rate of four (4) per cent. per annum, (Thornton Conrow.) payable annually, together with three hundred dollars of the principal on each note that one of said notes be passed by my executors to each of my said children as part of my said estate, and that my children shall release and acquit my said executors from the same as the payment has been made in money.

Item 9. I give and bequeath to my son, William Henry, the store No. (5) five North Water St., valued by me at twelve thousand $12,000 dollars, also a farm near Port Norris, Cumberland Co., N. J., known as the William Lore farm, valued at two thousand $2,000 dollars.

Item 10. I give and bequeath to my daughter Anna Alida, the dwelling No. 1912 Spring Graden St., valued by me at fourteen thousand $14,000 dollars.

Item 11. I give and bequeath to my son Alford Thornton three houses, Nos. twelve hund. and three, 1205 and 1207 Potts St.,

531 valued by me at four thousand and five hundred $4,500 dollars, and the undivided one-half part of a court on Chenango St., owned by Priscilla G. Cuthbert and myself, one-half value at three thousand $3,000 dollars, and a farm in Burlington county, N. J., near Medford, containing about one hundred and thirty-four acres, known as the Sharp farm, valued at six thousand dollars $6,000. (Thornton Conrow.)

Item 12. All the bequests to my children in nine, ten and eleven, to be free and clear of all incumbrance, if there should be any incumbrance against any of the property described in the times 9, 10 and 11 at my death, the same is to be paid off by my executors as any other debts that I may owe within three years after my death, and my said executors shall pay the interest on the same from my joint estate until the principal is paid off all the bequests in items nine, ten and eleven is given to my three children during their natural lives, and not to be sold or disposed of by them at the decease of all or either of them, it is to descend to their heirs and legal representatives, except my son William Henry, he, may at any time sell the Lore farm heretofore described in item No. 9. If I

should sell or dispose of any of my property bequeathed to my children before my decease, then my child is to receive the amount of said property so disposed of at the price named in cash from my estate within three years from my death, with interest to be paid annually from my death at five (5) per cent. until the said principal is paid to him, her or them—the final settlement is to be made when my son Alford T., arrives at the age of twenty-five years, if living, if not, when he would be of age.

Item 13. The rest and remainder of my estate I give and devise and bequeath in equal parts, share and share alike, unto each
532 of my children William (Thornton Conrow.) Henry, Anna Alida and Alford Thornton, and to his or her or their issue, and in default thereof, in any case to the survivors or survivor, his heir or their issue absolutely and forever in the event of the death of either of my said children, leaving issue before the final settlement and distribution, said issue, my grandchild or grandchildren to take and receive the sum of my said deceased child.

Item 14. From the time of my decease until my estate shall be fully settled my said executors shall act as trustees of my children, and shall advance such sum or sums of money as may be required for the support and education. Interest shall be charged upon all such advances from the time of payment till the final settlement, and such advances with interest shall be a charge upon each share or legacy respectfully.

Item 15. It is my will and purpose, and I hereby order and direct my interest in property known as the Longwood farm situated in Baltimore county, Maryland, shall not be sold or conveyed away by my executors or children until my son Alford Thornton shall, or would of, if living, arrive at the age of twenty-five years.

Item 16. It is my will and purpose, and I hereby order and direct, that my one-third interest in (Thornton Conrow) property situated in the State of West Virginia owned by Benjamin Rich and R. D. Wood's sons, and myself shall not be sold or conveyed before my son Alford Thornton shall arrive at the age of twenty-five years, if living, if deceased, not until he would have been twenty-five years of age, if he had so long lived, unless they can sell at a fair price, not less than on- dollar per acre.

Item 17. I order and direct positively, beyond question or cavil, that if any of my heirs or legatees shall be dissatisfied with
533 the provisions of this, my last will, and commence proceedings in law to test the same, for any cause whatsoever, I direct that the person or persons so doing shall be deprived of all right and benefit in my estate, except that left to them during their natural lives.

Item 18. For this purpose of my will I, Thornton Conrow, do hereby give, devise and bequeath unto my executors, hereafter named, all my estate, real and personal, and mixed, whatsoever and wheresoever, in trust, for the purpose herein specified, and subject to the limitations and reservations in item before mentioned. I hereby authorize and empower my said executors and the survivor of them to sell and dispose of all or any portion of the residue of my real or

(Thornton Conrow.) personal estate at public or private sale for such price or prices and upon such terms and conditions, and at such times or time, as to them in their discretion, or the survivor of them, may seem best; and to grant and convey the same to the purchaser or purchasers, his, her or their assigns from all liability for, in or on account of the purchase-money, the application thereof, and they my executors are not to give any security in this or any other State, where said property may be so situated.

Item 19. I nominate and appoint my esteemed friend Burtis Barber, and my eldest son William Henry, to be the executors of this, my last will and testament, or the survivor of them.

In witness whereof, I have set my hand and seal to this, my last will and testament all these sheets of paper on this first day of July eighteen hundred and eighty-one (1881.)

NOTE: The interlining in item 12 was done before signing, it being between the last two lines in that item.

THORNTON CONROW. [SEAL.]

534 Signed, sealed and published and delivered by the above-named Thornton Conrow as and for his last will and testament in presence of us who have hereunto set and subscribed our names at his request as witnesses thereto, in the presence of the testator and each other.

ROB'T H. SHARPLESS,
1936 *N. 21st St., Phila.*
CH. CORNELL,
2828 *Poplar St., Phila.*

CITY AND COUNTY OF PHILADELPHIA, *ss:*

REGISTER'S OFFICE, *March 21st*, 1882.

Then personally appeared Rob't H. Sharpless and Charles Cornell, the subscribing witnesses to the foregoing last will of Thornton Conrow, deceased, and on their solemn oath and affirm'n did say that they were present and did see and hear Thornton Conrow, deceased, the testator therein named, sign, seal, publish, and declare the same as and for his last will and testament, and that at the doing thereof he was of sound, disposing mind, memory, and understanding, to the best of their knowledge and belief.

CH. CORNELL.
ROBERT H. SHARPLESS.

Sworn and subscribed before me the date above.

WM. G. SHIELDS,
Dep. Register.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

REGISTER'S OFFICE, *March 23rd*, 1882.

I do affirm that as the executor of the foregoing last will and testament of Thornton Conrow, deceased, I will well and truly administer the goods and chattels, rights and credits, of said deceased ac-

cording to law, and that I will diligently and faithfully regard and well and truly comply with the provisions of the law relating to collateral inheritances; that the said testator died on the 15th
535 day of March, A. D. 1882, at 3.20 o'clock p. m.

BURTIS BARBER,
1741 *Fairmount Ave.*

Affirmed and subscribed before me the date above, and letters testamentary granted unto him.

WM. G. SHIELDS,
Dep. Register.

(Copy.)

STATE OF PENNSYLVANIA, } ss:
Philadelphia County, }

I certify that at an orphans' court for the county afore-
[L. S.] said, held at Philadelphia on the seventh day of July, A. D. one thousand eight hundred and eighty-four, before the Honorable William B. Hanna, president, and his associate judges of said court,

In the Matter of the Estate of THORNTON CONROW, Dec'd,

Surpetition, it is ordered and decreed that the register be authorized and empowered to appoint S. Morris Waln and Howard F. Conrow administrators *d. b. n.* of said estate in place of Burtis Barber, removed, and said appointees are ordered to enter security before the register in sum of $25,000.

Witness my hand and the seal of the said court this 14th day of July, A. D. one thousand eight hundred and eighty-four.

A. J. FORTIN,
1st Ass't Clerk Orphans' Court.

CSS. BLIGHT, ESQ.,
G. R. VANDUSEN,
Attorney for Petitioner.

536 COMMONWEALTH OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

REGISTER'S OFFICE, *June 29th*, 1887.

I, William B. Kinsey, register of wills and *ex officio* clerk of the orphans' court for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, do hereby certify the foregoing to be a true and accurate copy of the last will and testament of Thornton Conrow, deceased, together with the probate thereof, upon which letters testamentary were duly granted unto Burtis Barber on the 23rd day of March, A. D. 1882. Said Burtis Barber having been discharged by the orphans' court, letters of administration *d. b. n. c. t. a.* were granted unto S. Morris Waln and Howard F. Conrow on the 15th day of July, A. D. 1884, and the same remains on file and of record in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] official seal, at Philadelphia, the date above.

W. B. KINSEY,
Register of Wills and ex Officio Clerk of Orphans' Court.

STATE OF PENNSYLVANIA, }
Philadelphia County, } *ss:*

I, William B. Hanna, president judge of the orphans' court of Philadelphia county, do certify that the foregoing certificate and attestation made by William B. Kinsey, Esq., register of wills and *ex officio* clerk of said orphans' court, whose name is thereto subscribed and seal of his office affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 29th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

WM. B. HANNA, [L. S.]
President Judge.

537 STATE OF PENNSYLVANIA, }
Philadelphia County, } *ss:*

I, William B. Kinsey, Esq., register of wills and *ex officio* clerk of the orphans' court of Philadelphia county, do certify that the Honorable William B. Hanna, by whom the foregoing attestation was made and who has thereunto subscribed his name, was at the time of making thereof and still is president judge of the orphans' court of Philadelphia county, duly commissioned and sworn; to all whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 29th day of June, in the year
[SEAL.] of our Lord one thousand eight hundred and eighty-seven.

W. B. KINSEY,
Register of Wills and ex Officio Clerk of the Orphans' Court.

And on another day, to wit, on the 2nd day of August, 1887, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.* }
vs. } In Equity.
BENJAMIN RICH *et al.* }

This day came the plaintiffs, by James H. Ferguson, Esquire, their counsel, and it appearing to the court from the return of the marshal on the process awarded in this cause against the defendants Abram Waltman, Ferdinand F. Sharp, and D. S. Robinson, defendants in the original and first and second amended and supplemental bills to answer the same, are not found in the district of West Virginia; and it further appearing to the court by the return of the marshal of the process awarded in this cause against the de-

fendants S. Morris Waln and Howard F. Conrow, administrators *de bonis non* and trustees of the estate of Thornton Conrow, deceased, and William Henry Conrow, Anna Alida Conrow, Sarah Chew, Alford Thornton Conrow, Samuel Twomey, Alice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, children, heirs-at-law, and devisees of Thornton Conrow, deceased, defendants in the bill of revivor in this cause, to answer the same, are not found in the district of West Virginia; and it further appearing to the court by the return of the process awarded in this cause against Walter Wood, Richard Wood, and Edward R. Wood, the heirs-at-law of Randolph Wood, deceased, defendants in said bill of revivor, to answer the same, are not found in the district of West Virginia; and it further appearing to the court by the affidavit of James H. Ferguson, the solicitor and counsel of the plaintiffs in this cause, that none of the said defendants are inhabitants of the district of West Virginia:

538 It is therefore ordered that the said defendants Abram Waltman, Ferdinand F. Sharp, and D. S. Robinson do appear here and plead, answer, or demur to the original and first and second amended and supplemental bills filed in this cause by the 25th day of September, 1887, and that the said defendants S. Morris Waln, Howard F. Conrow, administrators *de bonis non* and trustees of the estate of said Thornton Conrow, deceased, as aforesaid, and the said William Henry Conrow, Anna Alida Conrow, Alford Thornton Conrow, Sarah Chew, Samuel Twomey, Alice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, children, heirs-at-law, and devisees of Thornton Conrow, deceased, as aforesaid, and Walter Wood, Richard Wood, and Edward R. Wood, heirs-at-law of Randolph Wood, deceased, as aforesaid, and each of them do appear here and plead, answer, or demur to the said original and first and second amended and supplemental bills and bill of revivor and to show cause, if any they or either of them have, why this suit shall not be revived against them

539 and each of them, as prayed for in said bill of revivor; and it further appearing to the court from the papers in this cause that Burtis Barber, one of the executors and trustees named in the will of the said Thornton Conrow, deceased, was, on his motion, made a defendant in this cause as such executor and trustee, and that leave was given him to answer herein within sixty days, and that he has failed to plead, answer, or demur to either of the said bills in this cause, although the time so given him to answer has long since expired; and the said Burtis Barber not being an inhabitant of this district of West Virginia nor found therein, it is therefore ordered that he do appear, plead, answer, or demur to each of the said bills by the said 25th day of September, 1887; and it further appearing to the court by the affidavit aforesaid that it is not practicable to serve this order on the said absent defendants personally, it is therefore further ordered by the court that this order be published in the Parkersburg Sentinel, a newspaper published in the city of Parkersburg, in the district of West Virginia, once in each week for six consecutive weeks, and also in some newspaper

published in the city of Philadelphia once in each week for six consecutive weeks.

And on the 26th day of September, 1887, the following proof of publication was filed in the clerk's office of the said court:

540 STATE OF PENNSYLVANIA, } ss:
City and County of Philadelphia, }

I, Joseph S. Clark, a notary public in and for the city, county, and State aforesaid, do hereby certify that W. H. McCormick this day personally appeared before me in the city and county aforesaid, and, being by me first duly affirmed, says that he is the clerk of the Philadelphia Press, a newspaper printed and published in the city of Philadelphia, and that the annexed order of the circuit court of the United States in and for the district of West Virginia was published in the said newspaper once in each week for six consecutive weeks, as by said order is required and directed, commencing Aug. 5th.

[SEAL.] Given under my hand and the seal of my office this 24th day of September, A. D. 1887.

W. H. McCORMICK.

"Commencing Aug. 5th," in third line above, being interlined before signing.

[SEAL.] JOSEPH S. CLARK,
Notary Public.

Notice.

At a circuit court of the United States for the district of West Virginia continued and held at Parkersburgh, in said district, on the second day of August, A. D. 1887, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs. } In Equity.
BENJAMIN RICH *et al.*

This day came the plaintiffs, by James H. Ferguson, their counsel, and it appearing to the court from the return of the marshal of the process awarded in this cause against the defendants Abram Waltman, Ferdinand F. Sharp, and D. S. Robinson, defendants in the original and first and second amended and supplemental bills, to answer the same, are not found in the district of West Virginia; and it further appearing to the court by the return of the marshal of the process awarded in this cause against the defendants S. Morris Waln and Howard F. Conrow, administrators *de bonis non*
541 and trustees of the estate of Thornton Conrow, dec'd, and William Henry Conrow, Anna Alida Conrow, Sarah Chew, Alfred Thornton Conrow, Samuel Twomey, Allice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, children, heirs-at-law, and devisees

of Thornton Conrow, deceased, defendants in the bill of revivor filed in this cause, to answer the same, are not found in the district of West Virginia; and if further appearing to the court by the return of the process awarded in this cause against Walter Wood, Richard Wood, and Edward R. Wood, the heirs-at-law of Randolph Wood, deceased, defendants in said bill of revivor, to answer the same, are not found in the district of West Virginia; and it further appearing to the court by the affidavit of James H. Fugerson, the solicitor and counsel of the plaintiffs in this cause, that none of the said defendants are inhabitants of the district of West Virginia, it is therefore ordered that the said defendants Abram Waltman, Ferdinand F. Sharp, and D. S. Robinson do appear here and plead, answer, or demur to the original and first and second amended and sup-lemental bills filed in this cause by the 25th day of September, 1887, and that the said defendants S. Morris Waln and Howard F. Conrow, administrators *de bonis non* and trustees of the estate of the said Thornton Conrow, deceased, as aforesaid, and the said William Henry Conrow, Anna Alida Conrow, Alford Thornton Conrow, Sarah Chew, Samuel Twomey, Alice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, children, heirs-at-law, and devisees of Thornton Conrow, deceased, as aforesaid, and Walter Wood, Richard Wood, and Edward R. Wood, heirs-at-law of Randolph Wood, deceased, as aforesaid, and each of them, do appear and plead, answer, or demur to the said original and first and second amended and supplemental bills and bill of revivor and to show cause, if any they or either of them have, why this suit shall not be revived against them and each of them, as prayed for in said bill of revivor, by the said 25th day of September, 1887; and it further appearing to the court from the papers in this cause that Burtis Barber, one of the executors and trustees named in the will of said Thornton Conrow, deceased, was on his motion made a defendant in this cause as such executor and trustee, and that leave was given him to answer herein in sixty days, and that he has failed to plead, answer, or demur to either of the said bills in this cause, although the time so given him to answer has long since expired, and the said Burtis Barber not being an inhabitant of the district of West Virginia nor found therein, it is therefore ordered that he do appear here and plead, answer, or demur to each of said bills by the 25th day of September, 1887.

And it further appearing to the court by the affidavit aforesaid that it is not practicable to serve this order on the said absent defendants personally, it is therefore further ordered by the court that this order be published in the Parkersburg Sentinel, a newspaper published in the city of Parkersburg, in the district of West Virginia, once in each week for six consecutive weeks; also in some newspaper published in the city of Philadelphia once in each week for six consecutive weeks.

A true copy from the record.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

542 And on another day, to wit, on the 15th day of October, 1887, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*
} In Equity.

This day came the plaintiffs, by James H. Ferguson, Esquire, their counsel and attorney, and it appearing to the court that the order of publication made in this cause on the 2nd day of August, 1887, requiring the absent defendants Abram Waltman, Ferdinand F. Sharp, and D. S. Robinson to appear here and plead, answer, or demur to the original and first and second amended and supplemental bills filed in this cause by the 25th day of September, 1887, and also requiring the absent defendants S. Morris Waln and Howard F. Conrow, administrators *de bonis non* and trustees of the estate of Thornton Conrow, deceased, and William Henry Conrow, Anna Alida Conrow, Alford Thornton Conrow, Sarah Chew, Samuel Twomey, Alice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, children, heirs-at-law, and devisees of Thornton Conrow, deceased, as aforesaid, and Walter Wood, Richard Wood, and Edward R. Wood, heirs-at-law of Randolph Wood, deceased, and each of them to appear here and plead, answer, or demur to the original and first and second amended and supplemental bills and bill of revivor filed in this cause, and to show cause, if any either of them have, why this suit should not be revived and prosecuted against them as prayed for in said bill of revivor by the said 25th day of September, 1887, and also requiring Burtis Barber, one of the executors and trustees named in the last will and testament of Thornton Conrow, deceased, to appear here and plead, answer, or demur to the said original and first and second amended and supplemental bills by the 25th day of September, 1887, has been duly published in the Philadelphia Press, a newspaper published in the city of Philadelphia, in the State of Pennsylvania, once in each week for six consecutive
543 weeks, commencing on the 5th day of August, 1887, and that said order has also been duly published in the Parkersburg Sentinel, a newspaper printed and published in the city of Parkersburg, in the State and district of West Virginia, once in each week for six consecutive weeks, commencing on the 6th day of August, 1887, as by the said order is required and directed, and neither of the said defendants having appeared here and either plead, answered, or demurred to the said bills or either of them by the said 25th day of September, 1887, and they and each of them still failing to appear, plead, answer, or demur to said bills or either of them, it is therefore, on motion of said plaintiffs, ordered and decreed by the court that jurisdiction of this cause as to the said absent defendants and each of them be, and the same is hereby, entertained in pursuance of section 738 of the Revised Statutes of the United States, and that this cause be proceeded with, heard, adjudicated, and de-

termined in the same manner as if the said absent defendants and each of them had been served with process within this district.

And no cause being shown or alleged by the said administrators *de bonis non* and trustees of the estate of Thornton Conrow, deceased, or either of them, nor by the said children, heirs-at-law, and devisees of said Thornton Conrow, deceased, or either of them, nor by the said heirs-at-law of said Randolph Wood, deceased, or either of them, why this cause should not be revived and prosecuted against them as such administrators *de bonis non* and trustees of the estate of said Thornton Conrow, deceased, and as such children, heirs-at-law, and devisees of said Thornton Conrow, deceased, and as such heirs-at-law of said Randolph Wood, deceased, it is therefore further adjudged, ordered, and decreed by the court that this cause be, and the same is hereby, revived against the said administrators *de bonis non* and trustees of the said Thornton Conrow, deceased, and against
the children, heirs-at-law, and devisees of said Thornton Con-
544 row, deceased, and against the said heirs-at-law of the said
Randolph Wood, deceased, and each of them, as defendants in this cause and prosecuted against them as such defendants, and the clerk of this court is directed to set this cause for hearing as to all the said absent defendants at the November rules, 1887.

And on another day, to wit, on the 31st day of January, 1888, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.*
} In Equity.

On motion of the complainants, by James H. Ferguson, their solicitor and counsel, they have leave to withdraw from the files in this cause all the exhibits referred to and filed with the depositions heretofore taken in this cause, to be used in the further taking of depositions, and which are to be returned with said depositions, if taken; if not taken, then to be returned and filed with the former depositions taken in this cause; and it is further ordered that certified copies of all such exhibits as are originals shall be filed with the papers in this cause when such exhibits are withdrawn, and a list shall be filed of all such exhibits as purport to be copies which are certified from the records and files of other offices.

And on another day, to wit, on the 30th day of May, 1888, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.*
} In Equity.

This cause having been regularly set for hearing as to all the parties therein, now, on motion of the plaintiffs, by James H. Ferguson, their attorney, it is ordered, adjudged, and decreed by the
545 court that the plaintiff- have ninety days in which to take their depositions-in-chief in this cause, and that the defend-

ants have sixty days from that time to take their depositions herein, and that the plaintiff- have twenty days thereafter to take depositions in rebuttal of the evidence of the defendants if they desire to take such evidence.

And it appearing to the court from the papers in the cause that Burtis Barber, the executor and trustee of the last will and testament of the defendant Thornton Conrow, deceased, who alone gave bond as such, has been removed as such executor and trustee by the proper authority, and that S. Morris Waln and Howard F. Conrow have in due form of law been appointed administrators, with the will annexed, and trustees of the estate of said Thornton Conrow, deceased, and have duly qualified as such, and that they, together with the heirs-at-law and devisees of the said Thornton Conrow, deceased, have been made and now are parties defendant to this suit, but that none of them have personally or by counsel appeared herein, it is therefore further adjudged, ordered, and decreed by the court that the service of a notice of the time and place of the taking of the plaintiffs' depositions herein on the said administrators *de bonis non* and trustees shall be a sufficient notice of such taking to the said heirs and devisees and each of them, and leave is given the plaintiffs to retake any or all of the depositions heretofore taken by them in this cause if they desire to do so; and it is further adjudged, ordered, and decreed by the court that such of the depositions heretofore taken in this cause as may not be retaken herein in which the attorney of record or any other attorney of the said defendant Thornton Conrow, deceased, or of his executor and trustee Burtis Barber appeared and cross-examined the witnesses may be read as evidence in this cause at the hearing thereof as to the heirs and devisees and administrators and trustees of said Thornton Conrow, deceased.

546 And on the same day, to wit, on the 30th day of March, 1888, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.*
} In Equity.

On motion of the plaintiffs, by James H. Ferguson, their attorney, it is ordered, adjudged, and decreed by the court that Joseph S. Clark, of the city of Philadelphia, in the State of Pennsylvania, be, and he is hereby, appointed a special examiner to take depositions in this cause in the said city of Philadelphia.

And on another day, to wit, on the 11th day of June, 1888, the following order was made and entered of record, to wit:

TAMLIN BRAXTON and Others
vs.
BENJAMIN RICH and Others.
} In Equity.

On motion of the plaintiffs, by James H. Ferguson, their attorney, it is ordered, adjudged, and decreed by the court that E. M. Blanch-

ard, of Bellefonte, Pennsylvania, be, and he is hereby, appointed a special examiner to take depositions in this cause at Bellefonte, in the State aforesaid.

And on another day, to wit, on the 13th day of October, A. D. 1888, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*
} In Equity.

The plaintiffs in this cause, by James H. Ferguson, their counsel and attorney, this day moved the court for the appointment of special examiners to take the evidence to be adduced in this cause, orally, in pursuance of equity rule 67 of the rules of practice prescribed for the courts of equity of the United States by the Supreme Court of the United States; and it appearing to the court
547 the defendants have had reasonable and legal notice of this motion, and no objection being made to the said motion—

It is therefore adjudged and ordered by the court that Joseph S. Clark, A. C. Dennison, E. M. Blanchard, G. M. Fleming, William C. Casper, Joseph A. Jones, E. B. Dyer, B. C. Conrad, R. P. Conrad, Frank Woods, C. E. Wellford, and J. R. V. Daniels and each of them be, and they are hereby, appointed special examiners, any one of whom may act at any place in any State or district in which the depositions of witnesses in this cause are to be taken, to examine all such witnesses in this cause as may be produced before him, reduce their evidence to writing, and certify, enclose, and return their depositions to the clerk of this court in the manner and form prescribed by said rule; and any one of said special examiners may do and perform any duty prescribed by said rule to be done in relation to the examination of such witnesses, including the making of the order therefor required fixing the length of time for which notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors or parties of the time and place of the examination of the witnesses whose depositions are to be taken under this order; and it is further ordered that the defendants, as well as the plaintiffs, may have their evidence in this cause taken orally by and before any of the special examiners herein named.

And on another day, to wit, on the 10th day of January, A. D. 1889, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.*
} In Equity.

This day the plaintiffs, by James H. Ferguson, their attorney, moved the court for an order fixing the time in which the taking of the depositions in this cause shall be completed; and thereupon it is ordered that the plaintiffs do complete the taking of their
548 depositions-in-chief by the 12th day of January, 1889, and that the defendants do complete their depositions herein by

the — day of ——, 1889, and that the plaintiffs, in case they desire to take depositions in rebuttal, do complete the same by the — day of ——, 1889.

And on another day, to wit, on the 23rd day of January, 1889, the following orders were made and entered of record, to wit:

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.* } In Equity.

This day came the plaintiffs, by James H. Ferguson, their attorney, and suggested the death of the plaintiff Lelia C. Stiles; and it appearing to the court that this cause survives to the other plaintiffs therein, it is therefore adjudged, ordered, and decreed that the same be proceeded in and prosecuted in the names of the said surviving plaintiffs.

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.* } In Equity.

It appearing to the court that the plaintiffs in this cause have finished the taking of their depositions-in-chief herein, in pursuance of the order heretofore made in this cause, therefore, on motion of the plaintiffs, by James H. Ferguson, their attorney, it is ordered that the defendants do close the taking of their depositions herein within sixty days from this date, and that the plaintiffs close the taking of their depositions in rebuttal within twenty days from the day the defendants shall close the taking of their depositions, and that a copy of this order be forwarded by mail by the clerk of this court to Caleb Boggess, attorney for the defendants, at Clarksburg, West Virginia, and to the defendant S. Morris Waln, executor, &c., and attorney for the devisees of Thornton Conrow, deceased, at Philadelphia, Pennsylvania.

549 And on another day, to wit, on the 29th day of June, 1889, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Equity.

This cause came on to be heard at this term of the court as to all of the defendants except the heirs, devisees, personal representatives, and trustees of Thornton Conrow, deceased, upon the pleadings and exhibits filed therewith and the depositions taken herein and exhibits filed with the same as the same existed and were filed prior to the 20th day of November, 1888, and was argued by counsel; and for the purpose of speeding the hearing of this cause as to Benjamin Rich and the Wood Brothers and in order to relieve the defendants herein from the necessity of taking any evidence in rebuttal of the depositions taken by the plaintiffs herein after the 20th

day of November, 1888, and filed in this cause, it is now stipulated by counsel of the plaintiffs and the counsel of defendants Benjamin Rich and the defendants Wood Brothers that all exceptions heretofore taken by either party to the depositions taken by the other prior to the said 20th day of November, 1888, are hereby waived, and that all of said depositions so taken prior to said 20th day of November, 1888, shall be read on the hearing of this cause as if no exceptions thereto had been taken.

And it *being* further stipulated that the copies of any and all exhibits filed with the pleadings and depositions herein agreed to be read as aforesaid upon the hearing shall have the same effect as if they were the originals of the papers of which said exhibits purport to be copies, and that the copies of all exhibits filed with the pleadings and with the depositions taken herein before the said 20th day of November, 1888, and which exhibits are made parts of the depositions taken by the plaintiffs since November 20th, 1888,
550 as well as the deposition of Albert Owen and exhibits filed with the same, which was taken since the 20th day of November, 1888, and the copies of deeds filed with the depositions taken at Philadelphia since the 20th day of November, 1888, are also to be read as evidence with the same effect as if they were the original papers from which said exhibits were taken, and that no other depositions taken by the plaintiffs since the 20th day of November, 1888, or papers, except as hereinbefore provided for and described, are to be or shall be read at the hearing aforesaid unless agreed to in writing by the plaintiffs and defendants Rich and Wood Brothers; and thereupon it is ordered by the court that this cause be set down for hearing on the 26th day of September, 1889; and it is further ordered that the question as to the costs of taking the said depositions of the plaintiffs since the said 20th day of November, 1888, be reserved until the final order or decree herein.

Agreed to this 29th day of June, 1889.

JAMES H. FERGUSON,
Att'y & Counsel for Plaintiffs.
JOHN A. HUTCHINSON,
JOHN F. KEATOR,
Counsel for Def'ts Rich and Wood Bros.

And on another day, to wit, on the 9th day of July, 1889, the following order was made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*
} In Equity.

This day this cause came on to be heard as to the defendants S. Morris Waln and Howard F. Conrow, administrators *de bonis non* and trustees of the estate of Thornton Conrow, deceased, with the will of said Conrow annexed, and Alford Thornton Conrow
551 and Anna Alida Levis, late Anna Alida Conrow, survivors of William Henry Conrow, deceased, devisees of the real estate in question in this suit, so far as the same was claimed by the

said Thornton Conrow in his lifetime, under and by virtue of the last will and testament of said Thornton Conrow, deceased, and the other children, heirs-at-law, and devisees of the said Thornton Conrow, deceased, and was argued by plaintiffs' counsel; and it appearing to the court that the said defendants and each of them have failed to appear herein and plead, answer, or demur to the plaintiffs' bill or amended and supplemental bills or bill of revivor or either of them within the time required by law and the rules of this court, by reason whereof the plaintiffs' said bills and each of them have been regularly taken for confessed and set for hearing as to the said defendants and each of them; and it further appearing to the court that since the said bills were taken for confessed and set for hearing as aforesaid the said S. Morris Waln, who is a practicing attorney, has entered his appearance herein as attorney for himself and said Howard F. Conrow, as such administrators and trustees as aforesaid, and that, although more than thirty days have elapsed since the appearance of said Waln as such attorney, the said Waln and Howard F. Conrow, administrators and trustees as aforesaid, have failed to plead, answer, or demur to said bills or either of them of the said plaintiffs, and that they still fail so to do, it is therefore, upon consideration thereof, now ordered, adjudged, and decreed as follows, viz: That as to the said Alford Thornton Conrow and Anna Alida Levis, surviving devisees of the real estate in question in this suit as aforesaid, and S. Morris Waln and Howard F. Conrow, administrators and trustees as aforesaid, and the other children, heirs-at-law and devisees of Thornton Conrow, deceased, the following-named deeds and each of them, to wit, a deed executed by James Woodzell, recorder of the county of Webster,
in the State and district of West Virginia, bearing date the
552 28th day of September, 1870, conveying to the defendant
Benjamin Rich and Thornton Conrow a tract of land described as containing 100,000 acres, entered on the land books of the said county of Webster in the year 1868, and charged with taxes thereon for that year in the name of William McClary, and sold for the non-payment of the taxes so assessed thereon in the year 1869, at which sale the said Benjamin Rich became the purchaser thereof for the sum of forty-one and $\frac{83}{100}$ dollars ($41.83), as stated in said deed; also a deed executed by the said James Woodzell, recorder as aforesaid, bearing date the 28th day of September, 1870, conveying to the said Benjamin Rich, "in part assignee of Albert Owen and G. P. Shreeve," a tract of land described as containing 58,500 acres, entered on the land books of the said county of Webster in the year 1868, and charged with taxes thereon for said year in the name of Henry Banks, and sold for the non-payment of the taxes so assessed thereon in the year 1869, at which sale the said Benjamin Rich, Albert Owen, and G. P. Shreeve became the purchasers thereof for the sum of eleven and $\frac{20}{100}$ dollars ($11.20), as stated in said deed; also a deed executed by the said James Woodzell, recorder as aforesaid, bearing date the 3rd day of October, 1872, conveying to the said Benjamin Rich and Thornton Conrow a tract of land described as containing 100,000 acres, entered on the land books of Webster

county in the year 1870 and assessed with taxes thereon for said year in the name of Viscount Clifford De Fleury, and sold for the non-payment of the taxes so assessed thereon in the year 1871, at which sale the said Benjamin Rich and Thornton Conrow became the purchasers thereof for three hundred and thirty-nine and $\frac{80}{100}$ dollars ($339.80), as appears by said deed; also a deed executed by said James Woodzell, recorder as aforesaid, bearing date the 28th day of September, 1870, conveying to the said Benjamin Rich and Thornton Conrow a tract of land described as containing 12,500 acres, entered on the land books of Webster county in the year 1868, and assessed with taxes thereon
553 for the said year in the name of George Messingbird, and sold for the non-payment of the taxes so assessed thereon in the year 1869, at which sale Albert Owen and G. P. Shreeve became the purchasers thereof, as appears by said deed; also a deed executed by the said James Woodzell, recorder as aforesaid, bearing date the 28th day of September, 1870, conveying to the said Benjamin Rich and Thornton Conrow a tract of land described as containing 105,000 acres, entered on the land books of the said county of Webster in the year 1868, and assessed with taxes thereon for said year in the name of James Welch, and sold for the non-payment of the taxes so assessed thereon in the year 1869, at which sale the said Albert Owen became the purchaser thereof, as stated in said deed; and also a deed executed by the clerk of the county court of said county of Webster, bearing date the 30th day of October, 1876, conveying to the said Benjamin Rich and Thornton Conrow and Walter Wood a tract of land described as containing 65,734 acres, entered on the land books of the said county in the year 1874, and assessed with taxes thereon for said year in the name of Francis Hyland, and sold in the year 1875 for the non-payment of the taxes so assessed thereon, at which sale the said Benjamin Rich became the purchaser thereof, as stated in said deed—be, and the same are hereby, vacated, set aside, and annulled as inoperative, fraudulent, null and void, and as constituting clouds upon the title of the plaintiffs to the lands in their said bills and exhibits mentioned, so far as they or either of them overlap and include any part or portion of the lands of the plaintiffs in question in this suit, as shown by the map and survey made and filed herein by Surveyor Yeager and the other evidence in the case.

And the court reserves the question of costs until the final decree as to the other defendants is rendered; but it is not intended by this decree to pass upon, affect, or impair, either directly or indirectly, any right, title, interest, or claim which the defendants
554 Benjamin Rich and the Wood Brothers, or either of them, may have in the real estate, or any part thereof, in question in this suit.

And on another day, to wit, on the 8th day of October, 1889, the following answer of S. Morris Waln and Howard F. Conrow, administrators, and Alford T. Conrow and Anna A. Levis, devisees, was filed in the clerk's office of said court:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*

To the honorable judges of the circuit court of the United States for the district of West Virginia:

The joint and separate answers of S. Morris Waln and Howard F. Conrow, administrators, &c., and Alfred Thornton Conrow and Anna A. Levis, heirs-at-law and devisees of Thornton Conrow, deceased.

The respondents, saving and reserving all manner of exception to plaintiffs' bill and first and second amended and supplemental bills on account of their many defects and insufficiency, answer and say:

1. That their testator, Thornton Conrow, died on the 15th day of March, 1882.

2. That the said Thornton Conrow, in 1870, purchased of Benjamin Rich, one of the defendants in this case, a one-half interest in the McCleary tract of 100,000 acres, and also an interest in the other lands described as plaintiffs' bill known as the Welch, etc.

3. That Benjamin Rich purchased said lands at tax sale in 1869 in good faith and without any fraud, as set out in his answer filed in this case.

4. That the said B. Rich and Thornton Conrow obtained the written opinion of S. A. Miller, Esq., setting forth that the McCleary title was a good title, but that the De Fleury title to the same lands, then about to be sold under that title for non-payment of
555 taxes, would add strength to the McCleary title if merged in the same owners; whereupon the said Rich and Conrow purchased also the De Fleury title.

5. That the said Benjamin Rich and Thornton Conrow purchased the said lands in good faith without any fraud or collusion, and have held continued and uninterrupted possession of said lands since 1870 to the present time — regularly paid all taxes and charges on said lands, amounting to over $20,000.

6. That neither the McCleary title nor the De Fleury title to the 100,000 acres of land, nor the Welch title nor any of the titles to the land described in plaintiffs' bill as acquired by the defendants by fraud, were ever owned or claimed by the plaintiffs; and respondents are advised and believe that the plaintiffs' title, called the Caperton title, is totally unaffected by the alleged acts of the defendants, and that the plaintiffs cannot allege that defendants acquired the De Fleury title or the McCleary title by fraud, but that the only persons who could allege that defendants acquired said title by fraud are the owners of said title or persons interested therein. Plaintiffs are not such persons.

7. That Allen T. Caperton, under whose title plaintiffs claim, in 1872, if not earlier, was informed by his agent, George Sawyers, that defendants had purchased the McCleary and De Fleury titles and had taken possession of the lands in question and were paying the

taxes thereon; nevertheless, the said Caperton never brought any action of ejectment or made any attempt to get possession of said lands, but, as the books and records in the office of the auditor at Charleston, West Virginia, show, the said Caperton abandoned his claim to said land and paid no taxes thereon from the year 1874 to the year 1881.

8. That on October 5th, 1875, the Caperton title was sold for non-payment of taxes and purchased by the State of West Virginia
556 and not redeemed within one year as required by law, thereby vesting in the State absolutely the ownership of said lands as to the Caperton title in 1876.

9. That under art. 13, sec. 3, of the constitution of West Virginia the Caperton title so vested in the State was transferred to defendants and became absolutely vested in them by reason of their possession of said lands and the payment of all taxes thereon from 1870 to the present time, the said Caperton and his heirs, as before stated, having paid no taxes from and including the year 1874 to 1881.

10. That defendants have now not only the McCleary and De Fleury titles, which they acquired by purchase, but they also have, by operation of art. 13, sec. 3, of the constitution, the Caperton title under which plaintiffs claim, which title became vested in defendants prior to 1881 and cannot be divested by any act of the plaintiffs after that time. The plaintiffs' bill to redeem was not filed until 1881 and was *ex parte*.

11. That the common-law action of ejectment is the proper and only remedy under the facts as stated in plaintiffs' bills.

12. The respondents deny each and every allegation in the plaintiffs' bills not expressly admitted by Benjamin Rich in his answer, and as to all allegations not so admitted they require proofs.

13. Respondents pray that plaintiffs' bill may be dismissed, and that respondents be allowed their costs.

S. MORRIS WALN,
Att'y and Counsel for Above Respondents.

Affidavit waived by agreement of counsel.

556½ *Depositions for Plaintiffs.*

And on another day, to wit, on the 22nd day of January, 1884, the following depositions were filed in the clerk's office of said court:

557 Depositions of witnesses taken before the undersigned, C. P. Dorr, a notary public in and for the county of Webster, in the State of West Virginia, pursuant to the annexed notice, at the office of C. P. Dorr, in the town of Addison, Webster county, West Virginia, on this 24th day of October, 1883, between the hours of 10 o'clock a. m. and — o'clock p. m. of that day, to be read in evidence on behalf of the plaintiffs in a certain suit in chancery pending in the United States circuit court for West Virginia, in which suit Tamlin Braxton & others are plaintiffs and Benjamin Rich & others are defendants.

Present: B. W. Byrne, attorney for plaintiffs, and —— ——, for defendants.

BALLARD P. CONRAD, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

Question 1st by B. W. BYRNE, plaintiffs' attorney:

1st Ques. Please state your age, residence, & occupation.

Ans. 34 years of age; Webster C. H., West Virginia; I am clerk of the county court of Webster Co., West Virginia.

2d Ques. Have you examined the assessor's books of your county in which the lands of your county are charged for taxation?

558 If so, is there any tract of land charged on said books for the year 1870 in the name of Viscount Clifford de Fleury?

2nd Ans. I have examined the assessor's land books on file in my office for the year 1870, and I find no land charged thereon in the name of Viscount Clifford de Fleury.

3d Ques. State who was the assessor of land for Webster county for the year 1870.

3d Ans. Andrew McElwain.

On motion of plaintiffs' counsel, B. W. Byrne, the further taking of these depositions is continued until to-morrow morn'g at 10 o'clock, at the same place.

C. P. DORR,
Notary Public.

OCTOBER 25TH, 1883.

The taking of the depositions in this case was resumed this day at the office of C. P. Dorr, the place specified in the notice, and the testimony of BALLARD P. CONRAD resumed as follows:

By B. W. BYRNE, counsel for plaintiffs:

4 Ques. Have you examined the delinquent list of the lands returned delinquent for the year 1870? If so, state what

559 entries appear upon —, if any, in relation to the lands known as the William McClary land or the Count de Fleury land containing 100,000 acres.

4th Ans. I have examined the delinquent list on file in my office

for the year 1870, returned by C. McDodrill, then sheriff of Webster county, in Glade district, and find a tract of land of 100,000 acres returned delinquent in the name of "Fleury Viscount Cliffordde," described as lying on Gauly and Williams river, S. W. 10 miles; State tax for State purposes, $40.00; State — for school purposes, $20.00; State tax for construction of hospital of insane, $10.00; county tax, $200.00. I found under the head, "Why returned delinquent" and under the words, "no property found," marks which would indicate that it was returned delinquent for the same reason — his return for the delinquency for the year 1870. I also find in the next line below the above entry the following entry: "Back tax on the same tract for the year 1869," State tax for State purposes, $40.00; State tax for school purposes, $20.00. I find no taxes charged for construction of hospital of insane for 1869 nor for county
561 purposes for that year.

Name of person chargeable with taxes.	Estate held.	Quantity of land.	Local description of land.	Distance & bearing from C. H.		State tax for State purposes.	State tax for school purposes.	State tax for construction of hospital for insane.	County tax for county purposes.	Why returned delinquent.
Glade township:				Bearing.	Mile-.					
Fisher, John S.	Fee.	2,500		W.	10	$5 40	$2 70	$1 35	$2 70	No property found for taxes.
Gumm, Lydia	"	200	Between Gauly & W'ms river-.	"	10	40	20	10	2 00	" " "
Haman, D'n'l H.	"	1,294	Beaver & Birch	"	16	67	34	17	3 27	" " "
Jones, John W., h's	"	50	Birch river	"	15	20	10	05	1 00	" " "
Lester, C. E.	"	475	Laurel creek	"	"	50	25	13	2 57	" " "
Middleton, H. O., heirs	"	1,000	No. 24, Rock Camp c'k			1 00	50	25	5 00	" " "
Same	"	1,000	" 27			1 00	50	25	5 00	" " "
Same	"	1,000	" 38			1 00	50	25	5 00	" " "
Same	"	1,000	" 42			1 00	50	25	5 00	" " "
McElwain, Vanburen	"	114	Welch glade	"	12	23	11	06	1 16	" " "
Fluery, Viscount Clifforde	"	100,000	Gauly & Williams riv.	S. W.	10	40 00	20 00	10 00	200 00	" " "
Back tax on same tract for y. 1869.						40 00	20 00			Back tax for 1869.
Night, John	"	100	Birch river	W.	18	20	10	05	1 00	No property found for taxes.
Norman, H. B.	"	2,700	" & Beaver	"	22	2 70	1 35	68	13 50	" " "
Patten, Robert	"	50,029				20 00	10 00	5 00	100 00	" " "
						$114 30	$57 16	$28 58	$347 01	

561 5th Ques. Where do you find the entry on the delinquent list for the year named, with reference to the order of the alphabet?

5 Ans. I find all the entries on the delinquent list in Glade district for the year 1870 in alphabetical order, except the entry or entries referred to in my former answer; this entry I find between the letter "M" and "N."

6 Ques. Will you be kind enough to make an abstract of the page of the delinquent list for the year 1870, in which this entry appears, and make it a part of your deposition?

6 Ans. I have made an abstract of the delinquent list for the year 1870, including the page on which the tract of 100,000 acres is entered; a copy of which I herewith file, marked Exhibit "A," which I wish to make a part of my answer.

7th Ques. Are you acquainted with the handwriting of Charles McDodrill, who was sheriff of Webster county at the time the delinquent list was made out for 1870? And, if so, state whether or not the entry in said list of Fleury Viscount Clifforde returning delinquent 100,000 acres of land is in the handwriting of said McDodrill?

7 Ans. I am acquainted with the handwriting of Charles
562 McDodrell, and I do not believe the entry referred to is in his handwriting.

Further this depona-t saith not.

B. P. CONRAD.

No other witnesses appearing, the further taking of these depositions is adjourned until to-morrow morning at 10 o'clock at the same place.

C. P. DORR,
Notary Public.

OCTOBER 26TH, 1883.

The taking of these depositions in this case was resumed this day at the office of C. P. Dorr, the place specified in the adjournment on yesterday and the place in the notice named.

Present: B. W. Byrne, counsel for plaintiff-.

ANDREW MCELWAIN, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

By B. W. BYRNE, counsel for plaintiff-:

1st Ques. State your age, residence, and occupation.

1st Ans. My age is 57; Baxter county, West Virginia; I am a miller by occupation.

563 2d Ques. Were you recently a resident of Webster county, West Virginia; and, if so, how long?

2d Ans. I resided in Webster county ever since the county was formed in 1860, and I left in March, 1883.

3d Ques. State what your occupation was while you lived in

Webster county, and whether or not you were an officer of said county.

3d Ans. I was a farmer, and I held the office of assessor for eight years in Webster county during the time I was a resident of said county, commencing in the year 1869 and ending in 1876.

4th Ques. Was you assessor for the year 1870; and, if so, did you make the assessor's land books for that year in your own handwriting?

4th Ans. I was assessor for the year 1870; to the best of my knowledge, I did.

5th Ques. Have you or not recently examined the assessor's land books for the year 1870, now on file in the clerk's office of the county court of Webster county?

5th Ans. I have looked at it to-day, and I now have it in my hand.

6th Ques. Will you please state whether or not the book you refer to is made out in your own handwriting; and, if so, whether or not it is the book returned by you to the proper
564 officer of your county.

6th Ans. It is made out in my own handwriting. I don't think the land book which I now hold in my hand and now on file in the office of the clerk of Webster county is the one I first returned to the office for the year 1870.

7th Ques. Is the land book of which you are now speaking made out in the same form in carrying out the taxes of lands and charging the owners in alphabetical order and making up the footings and additions that are required by law to be made in the assessor's land books?

7th Ans. I have examined the book and find that it is made out in the usual form, with the exceptions of the letters "A" and "B," which are now gone, and the larger part of the letter "C," and the footings and additions are not carried out. I find, on exam-ng the certificate in the back of the book, that I never signed it or qualified to it.

8th Ques. Will you be kind enough to state, if you know, why it is that this book is now on file in the clerk's office, instead of the original.

8th Ans. The clerk or recorder of Webster county told me that the original was lost or mislaid and got the book, which I
565 kept at home as a guide, and it has been retained in the office ever since.

9th Ques. In making out the land book which you filed in the clerk's office for the year 1870 did you make a copy of the one which you say you kept at home?

9th Ans. No, sir; the book I returned to the clerk's office for the year 1870 was a true copy of the one now on file in the office of the clerk of the county court, with the exceptions of footing up and qualif-ing to the book.

Further this deponant saith not.

A. McELWAIN.

ARTHUR C. HAMRICK, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

By Col. B. W. BYRNE, counsel for plaintiff-:

1st Ques. State your age, residence, and occupation.

1st Ans. I am 43; Webster county, West Virginia; farmer by occupation.

2 Ques. Please state if you ever held any office in the county of Webster; and, if so, what office it was, when it was, and how long did you hold the office.

566 2d Ans. I held the assessor office in the county of Webster. I was elected in the fall of 1866, and my term expired on the 31st day of December, 1868. [In pencil:] There was no assessm't for y'rs before '65.

3d Ques. State whether or not when you was assessor, in 1868, you entered a tract of land on the assessor's book of 187,000 acres for taxation in the name of Joseph Patterson; and, if so, by whose direction or authority did you enter it on the land books.

3d Ans. I entered a tract of 187,000 acres on the land book in the name of Joseph Patterson in the year 1868. I entered it by direction of J. B. Shreeves or his son.

4th Ques. Will you be kind enough to state all the tracts you entered in the year 1868, by the directions of J. B. Shreve or his son, on the land book of Webster county for taxation?

4th Ans. I entered a tract of 100,000 acres in the name of William McCleary, a tract of 58,500 acres in the name of Henry Banks, three tracts of 25,000 acres each in the name of Joseph Say and Zebline Curtis, a tract of 50,000 acres in the name of Robert Patten, a tract of 5,132 acres in the name of Benjamin Rider, one tract of 5,868 acres in the name of Benjamin Rider, one tract of 2,000 acres in the name of William C. Cooper, one tract of 750 acres

567 in the name of Elizabeth Bundner, one tract of 12,500 acres in the name of George Nusungbery, one tract of 1,000 acres in the name of James Ewing, one tract of 3,917 acres in the name of William Chambers, one tract of 105,000 acres in the name of James Welsh, one tract of 30,000 acres in the name of William Bridges, one tract of 70,000 acres in the name of Alexander Walcott, one tract of 27,000 acres in the name of Vander Pool, and also 187,000 acres in the name of Joseph Patterson, which I have before stated.

5th Ques. Please state if you have any written authority from James B. Shreve in your possession in regard to entering these lands.

5 Ans. I have three papers from J. B. Shreve and his son in my possession giving my directions as to entering the lands on the land books of Webster county for the year 1868.

6th Ques. Will you have any objections to making copies of these papers part of your answer and filing them as part of your deposition?

6 Ans. I have no objections in making copies of them part of my answer. I prefer to keep the originals myself.

"The following is a copy of the first paper referred to in witness's answer:"

568 BUCKHANNON, *May* 18, 1868.

The assessor of the county of Webster, in West Virginia, will put on the commissioner's books the following tracts of land, as follows:

One tract in the name of Joseph Patterson, containing one hundred eighty thousand acres, 187,000 acres.

One tract in the name of William McClary, containing one hundred thousand acres, 100,000.

Fifty-three tracts in the name of Henry Banks, containing fifty-eight thousand five hundred acres, 58,500 acres.

Three tracts in the name of Joseph Say and Zeboline Curtis, each containing *containing* twenty-five thousand acres, each tract 25,000 acres.

One tract in the name of Robert Patten, containing fifty thousand acres, 50,000 acres.

One tract in the name of Benjamin Rider, containing five thousand one hundred and thirty-two, 5,132, acres.

569 One tract in the name of Benjamin Rider, containing five thousand eight hundred and sixty-eight, 5,868, acres.

One tract in the name of William C. Cooper, containing two thousand acres, 2,000.

One tract in the name of Elizabeth Burnvell, containing seven hundred and fifty acres, 750 acres.

One tract in the name of George Neswingbury, containing 12,500 acres.

One tracts in the name of James Ewing, containing 1,000 acres.

One tract in the name of William Chambers, containing 3,917 acres. Endorsed on the back: "To the assessor of Webster county."

The following lands lays as follows that *was* handed to you by my son:

Joseph Patterson, 187,000 acres; lays on the head of Hally and including the left-hand fork of Elk until it strikes Upshur county, Hally township.

570 The William McClary 100,000 acres; lays on Gauly and Williams rivers, at the lower end of the county, said township.

The Henry Banks survey of 58,500 acres, laid off in 53 lots. The most lies east of Addison, on Elk & Gauly, Fork Lick township.

Three tracts of Joseph Say & Zebulin Curtis of 25,000 acres each; lays northeast of Addison, on Gauly and Williams river-, Fork Lick township.

One tract of Robert Patton of 50,000 acres; lays on the head of Hally, Hally township.

One tract of Benjamin Rider, 5,132 acres, on the head of Hally, Hally township.

Do. to said Rider, 5,862 acres on the head of Hally, Hally township.

George Messingbury, 12,500 acres on Gauly, at the upper end of the county, Fork Lick township.

James Ewing, 1,000 acres on Gauly, at the upper end of the county, Fork Lick township.

571 William C. Cooper, 2,000 acres south of Addison 4 miles, Fork Lick township; lives Salem, New Jersey.

Elizabeth Brundred, 750 acres on Laurel creek at Gaffi; lives in Brooklyn, New York; Glade township.

Please place the following tracts on the books and then will call on you and settle your fees liberally, as my son told you. These lands in Webster county is covered sometimes three — deep. If they owner chose to put them on the books at five cents per acre it will amount to thousands of dollars to the county as well the State, as my son told you. You will be attended to.

Yours truly, J. B. SHREEVE.

P. S.—Leave with Mr. Sawyer what you have put them down at, so that I can write to these men what it is, &c. The rest lives in Pennsylvania.

P. S.—Also put down on the books one tract in the name of James Welch containing 105,000 acres in Fork Lick township.

572 Also one tract in the name of William Bridges containing 30,000 acres in Fork Lick township.

Alexander Walcott, 70,000; New York.

Vanderpool, 27,000; New York.

The other paper is as follows:

The commissioner of the revenue:

The lands that I gave you a list of lays as follows: The 90,000 acres, the most lays in the Glade township; the two fifty-thousand-acre tracts lays most in the Glade township; the twenty-five thousand acres lays in the Fork Lick township; the thirty-five thousand acres lays in the Holley township; the ten thousand lays in the Fork Lick township.

Yours respectfully, J. B. SHREEVE,
Per W. W. McCLANHAN.

All them now live in Pennsylvania.

On motion of the plaintiffs' counsel, B. W. Byrne, the further taking of these depositions is continued until to-morrow morning at 10 o'clock at the same place.

C. P. DORR,
Notary Public.

OCTOBER 27TH, 1883.

573 The taking of these depositions in this case was resumed this day at the office of C. P. Derr, the place specified in the adjournment on yesterday and the same place in the notice named.

And the testimony of ARTHUR C. HAMRICK resumed as follows, to wit:

By B. W. BYRNE, counsel for plaintiff-:

7th Ques. State whether or not you entered the tracts of land named in your answer to my 4th Ques. in pursuance to the written directions by J. B. Shreve and his son, contained in the three papers of which those named in your answer to my 6th Ques. are copies.

7th Ans. I entered them according to the directions named in the papers referred to.

8th Ques. Will you be kind enough to state who paid you your fees for entering the lands described in your answer to my 4th Ques., which you entered in the land books for taxation.

8th Ans. Mark Shreve paid me a part, and I left my fee bills with P. F. Duffy for collection, being the balance of my fees. Duffy collected a part of them and paid them to me, and the rest is still due me.

9th Ques. Please state who is Mark Shreve.

9th Ans. He is the son of J. B. Shreve, and is the party who directed me to enter the lands or a part of them.

Further this deponent saith not.

ARTHUR C. HAMRICK.

574 P. F. DUFFY, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

By Col. B. W. BYRNE, counsel for the plaintiff-:

1st. Ques. State your age, residence, and occupation.

1st Ans. I am 42; Webster C. H., West Virginia; I am a merchant.

2d Ques. Please state if you recollect whether or not Arthur C. Hamrick ever left with you fee bills for collection for entering various tracts of land on the assessor's books of Webster county; and, if so, did you collect said bills, who paid them, and when were they paid.

2d Ans. I recol-ect Arthur C. Hamrick left fees bills or an account against John B. Shreve with me for collection, and Shreve afterwards paid it to me, or his son paid it by his father's directions; they were paid about 1868 or 1869.

Further this deponent saith not.

P. F. DUFFY.

ANDREW MCELWAIN, a witness, was recalled, answered and deposed as follows, to wit:

By Col. B. W. BYRNE, counsel for the plaintiff-:

1st Ques. Will you please state whether or not, when you were assessor of Webster county, you entered for taxation the follow-

ing tracts of lands: One tract of 50,000 a. in the name of
575 Rob't Patton; one tract of 200,000 acres in the name of Chas. Simms and Chas. Lee; one tract of 100,000 acres in the name of Alexander Walcott, and one other tract of 100,000 acres in the name of Alexander Walcott; one tract of 5,132 in the name of Benjamin Rider; one of 5,868 in — Benj. Rider, and one other tract of 5,000 acres in the name of Benj. Rider; and, if so, for what year did you enter them and by whose directions did you enter them?

1st Ans. I entered those tracts on the land books in the year 1870. To the best of my recollection, it was by the direction of John B. Shreve.

2 Ques. Who paid you your fees for entering those lands?

2 Ans. I recollect that I refused to enter those lands until my fees were paid. I took counsel from an attorney. He directed me if he paid me my fees to place the lands on the books. John B. Shreve paid my fees and I entered the lands as Shreve directed.

And further this deponent saith not.

A. McELWAIN.

CHARLES McDODRILL, a witness of lawful —, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

576 By Col. B. W. BYRNE, counsel for plaintiffs:

1st Ques. Please state your age, residence, and occupation.

1st Ans. I am 50 years old; Webster Co.; farmer.

2d Ques. State whether or not you held the office of sheriff of Webster county. And, if so, what year or years did you hold the said office of sheriff?

2 Ans. I held the office of sheriff of Webster Co. for the years 1868, 1869, 1870.

3d Ques. State whether or not you know anything about a tract of land of 100,000 acres being charged on the assessor's books in the name Flury Viscount Clifforde for the year 1870 and returned delinquent by you for that year.

3d Ans. I know nothing about it, except I see it in my delinquent list for that year.

4th Ques. State whether or not you received a copy of the assessor's land books for the year 1870.

4th Ans. Yes, sir; I received a copy of it.

5th Ques. Please state if you have that book now in your possession.

5th Ans. I don't think I have the book.

6 Ques. Will you be kind enough to state what became of it?

577 6 Ans. To the best of my knowledge and belief, I delivered it to one of James Woodzell's boys at the request of James Woodzell. Mr. James Woodzell asked me to loan him the book about the latter part of last winter and I brought the book down to

his residence and gave it to his son. Col. Byrne came to my house to see the book and I gave him an order to Woodzell for it.

7th Ques. Have you talked to James Woodzell about giving an order to Col. B. W. Byrne for the assessor's book referred to; and, if so, what did you say to him and what did he say to you?

7th Ans. I talked to him about it since I gave the order to Byrne. I asked him if Col. Byrne got the book. "He said he could not find it;" he said he had no recollection of me ever bringing it down to him. I told him that I had delivered it to one of the boys, and also told him I had left it with his boy and that he thanked me for doing it. I also told him that it was broke in two and doubled together; and he said it might be that, as he did not look for that kind of a roll or book.

8th Ques. Have you examined the delinquent list that was returned by you to the board of supervisors for 1870?

578 8th Ans. I have examined it.

9th Ques. Please state if that list is made out in your own handwriting.

9th Ans. It is not.

10th Ques. State if you qualified to it and signed it.

10th Ans. I qualified to it before F. M. Reynolds, justice, and I signed my name to it.

Further deponant saith not.

C. McDODRILL.

GEORGE W. SAWYERS, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

By Col. B. W. BYRNE, counsel for plaintiffs:

1st Ques. Please state your age, residence, and occupation.

1st Ans. I am 60 years of age; Webster county; farmer.

2d Ques. State whether or not you were acquainted with Allen T. Caperton during his lifetime, who claimed large bodys of land on Gauley, Williams, and Cranberry rivers, lying in Webster, Nicholas, and Greenbrier counties, being the same land now in controversy in this suit; and, if so, state whether you have a knowledge of the location of the lands owned by him.

579 2d Ans. Yes, sir; I was acquainted with him. I have a knowledge of the lands and the locality in which they are so located which was claimed by him.

3 Ques. Will you please state whether or not you know of any one holding a lease of said lands or any part thereof under the said Allen T. Caperton? If so, state who had such lease and all you know about it.

3d Ans. I know of no lease except—and that lease was made by myself to one Mark Hammons without the knowledge of A. T. Caperton. I reduced the lease to writing, which was signed by Mark Hammons. I then sent it to Allen T. Caperton; he then approved it by endorsing on the back. I have a copy of the original

lease which I sent to Mr. Caperton on which is endorsed in his own handwriting; a copy of which I furnish as a part of my deposition, and is in the words and figures following, to wit:

This day I, George M. Sawyer, of the county of Webster, acting as agent for Allen T. Caperton, of Monroe county, all of the State of West Virginia, has, for the sum of one dollar in hand paid and other valuable consideration, leased and rented for the said
580 Caperton to Mark Hammons all the tract or parcel of land owned by said Caperton at and around the forks of Williams river, the same land that William Mull-ns for value received on — under said Caperton, for the term of three years from this date, and the said Mark Hammons is to return possession of the said land peaceably and quiet- to the said Caperton whenever called for.

Given under our hands this 8th day of July, 1874.

A. T. CAPERTON,
By GEORGE M. SAWYER, *Agent.*
his
MARK x HAMMONS.
mark.

Witness:
B. MALLAHAN.
G. W. WOLVERTON.

The following endorsement is made on the back:
"Copy of lease." G. M. Sawyer, for A. T. Caperton, to Mark Hammons, Williams river.

The following additional endorsement on the back is in A. T. Caperton's own handwriting:
"This lease is made in conformity with my suggestion and direction, and I hereby approve the same. A. T. Caperton. 20 July, 1874.

581 4th Ques. Is the land described in the lease within the boundary of the land claimed by Allen T. Caperton?

4th Ans. The land that I leased to Hammons was within the boundary of the land claimed by Allen T. Caperton.

5th Ques. Is Mark Hammons still upon the land?

5th Ans. He is not as I know of.

6 Ques. Did you or not ever hear Mark Hammons say who he let have the lease or possession of the land?

6 Ans. I think I heard him say that he let Jesse Hammons and Jack Carter have the lease.

7th Ques. State, if you know, who occupies the land now.

7th Ans. I do not know.

8th Ques. Will you please state if you ever held an office in the county of Webster; and, if so, what office?

8th Ans. I held the office of clerk of the county court of Webster' county, commencing on the 1st day of Jan'y, 1873, and ending on the 31st day of December, 1878.

9th Ques. State whether you remember of seeing the assessor's land book in your office for the year 1870.

582 9th Ans. I do remember of seeing a part of the assessor's land book for the year 1870 when I came into office, but it was part gone when I first saw it.

10th Ques. Did you leave any part of the book in your office when your time expired?

10th Ans. Yes, sir; — did.

11th Ques. Who preceeded you in the office of the clerk of the county court?

11 Ans. There was no county court clerk. I was the first clerk, but there was a recorder.

12 Ques. In what office was the assessor's book kept prior to your term of office?

12 Ans. They were kept in the office of the recorder.

13 Ques. Who was the recorder of the county of Webster im-*i*-diately preceding the time in *in* which you took charge of the office of the clerk of the county court?

13th Ans. James Woodzell was the recorder.

Further this deponent saith not.

G. M. SAWYERS.

On motion of B. W. Byrne, plaintiffs' counsel, the further taking of these depositions is continued until Monday morn-g at 10 o'clock at the same place, "Sunday interve'g."

C. P. DORR,
Notary Public.

583 OCT. 29TH, 1883.

The taking of the depositions in this case was resumed this day at the office of C. P. Dorr, the place specified in the adjournment and the place named in the notice. No witnesses being present, on motion of B. W. Byrne, counsel for plaintiffs, the further taking of these depositions is continued until to-morrow, at 10 o'clock, at the same place.

C. P. DORR,
Notary Public.

OCTOBER 30, 1883.

The taking of these depositions in this case was resumed this day at the office of C. P. Dorr, the place specified in the adjournment on yesterday and the place named in the notice.

JAMES WOODZELL, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

By B. A. BYRNE, counsel for plaintiffs:

1st Ques. Please state your age, residence, and occupation.

1st Ans. I am 46 years of age; Webster Co.; lawyer.

2d Ques. State whether or not you ever held any office in
584 the county of Webster; and, if so, what it was, and how long did you hold the office.

2d Ans. I was the recorder of Webster county from January 1st, 1869, to December 31st, 1872. I was clerk of the circuit court during the same period. I have held the office of justice and county commissioner.

3d Ques. State whether or not the assessor for the year 1870 returned the assessor'- land book to your office for that year.

3d Ans. I presume he did. I have no certain recollection of it. I think if he had failed to do so I would have remembered it.

4th Ques. State whether or not you remember of ever having seen the assessor's land book for the year 1870 in your office.

4th Ans. I do not. I remember of having searched my office at different times, but failed to find it. I am satisfied that it was not in my office during the latter part of my term.

5th Ques. Have you any knowledge of what became of the assessor's book for the year 1870?

5th Ans. There was a criminal prosecution against one John C. Cool for forgery, in which he was charged with forging a tax
585 receipt, and the assessor's books for several years were taken out of my office to be used as evidence in that prosecution and the litigation growing out of it, and I think that that was one of the books taken and never returned. Soon after that time I wanted the book, and, so far as I remember, I have never seen it since.

6 Ques. Will you state, if you know, where they were taken to and by whom were they taken.

6 Ans. I think they were taken somewhere on Holly river to John Bickle, who was justice at that time. I don't remember who took them.

7th Ques. Were the books referred to taken during the time you were recorder, and were they taken by your consent?

7th Ans. Yes, sir; they were taken while I was recorder, and I don't think I objected to them being taken. I don't remember who took them. They came and asked me for them and I gave them the books.

8th Ques. Did you ever make any effort to recover them books?

8 Ans. I made enquiries as to their whereabouts with a view to getting them.

9th Ques. Did you or did you not ever go yourself to try to recover them?

586 9th Ans. I think not.

10 Ques. Are you or not agent or attorney for Benjamin Rich in his land transactions?

10 Ans. I have been acting as his agent in regard to his lands in this county prior — 1870 or 1871 up to the present time.

On motion of B. W. Byrne, plaintiffs' counsel, the further taking of these depositions is continued until to-morrow morning at 10 o'clock at the same place.

C. P. DORR,
Notary Public.

OCTOBER 31ST, 1883.

The taking of the depositions in this case was this day resumed at the office of C. P. Dorr, the place specified in the adjournment of yesterday and the place in the notice named. No witnesses being present, on motion of B. W. Byrne, the taking of the depositions is adjourned until to-morrow morn-g at 10 o'clock at the same place.

C. P. DORR,
Notary Public.

NOVEMBER 1ST, 1883.

The taking of these depositions in this case was this day
587 resumed in pursuance to the adjournment on yesterday at the office of C. P. Dorr, the place specified in the notice and the place named in the adjournment, and the testimony of JAMES WOODZELL was resumed as follows:

By B. W. BYRNE, counsel for plaintiffs:

11th Ques. Will you please state whether or not you have carefully examined the assessor's book, now on file in the clerk's office of Webster county, for the year 1870? And, if so, state whether or not there is a tract of land and charged on said book for taxation in the name of Flury, Viscount Clifford de, or any similar name.

11 Ans. I have examined a book made out on the forms of the assessor's land book for that year, but which does not appear to be signed by the assessor or sworn to by him or to have been certified by the recorder as having been examined and corrected by him, the blanks in the oath and certificate printed on the last page of said book, nor having been filed, and I see no such tract entered in that book. I find said book in the clerk's office with the assessor's land book for other years.

588 12 Ques. You stated in a former answer that you were recorder of Webster county for the year 1870.

12 Ans. I made out and delivered to the assessor once a year a list of all the tracts of land embraced in the deeds recorded duri-g the year. These lists were made out with reference to the time prescribed by law for the assessor to commence his assessment for each year and embraced in the deeds that were recorded duri-g the preceeding year.

13 Ques. I see on the delinquent list returned by the sheriff for delinquency of land for the year 1870 that this Flury land purports to have been charged with taxes for the year 1870 for all purposes for which lands were taxed in your county for the year 1870, and also with back taxes for State and State school purposes for the year 1869. Can you state why it was or at whose instance it was that this tract of land was charged with back taxes for the year 1869?

13th Ans. I cannot.

14th Ques. Will you state whether or not there was a tract
589 of land charged on the assessor's book prior to 1870 in the name of William McCleary, containing 100,000 acres?

14th Ans. There was a tract so charged.

15th Ques. Will you be kind enough to state for what year or years the 100,000 was charged in the name of William McCleary?

15th Ans. It was charged for the year 1868 in the assessor'- book in the name of William McClary. I think that is the only year that it was charged in the name of William McClary.

16 Ques. Please state, if you know, the history of that tract of land from the time it was charged to William McClary down to the present time, with reference to its ownership and its being charged with taxation.

16 Ans. I have examined the assessor's books and deed books and lists of delinquent sales and find that it was sold on the 24th day of September, 1869, in the name of William McClary and bought by Albert Owen and Benjamin Rich. I find a tax deed based on that sale made on the 28 of September, 1870, to Benjamin Rich and Thornton Conrow. I find that it was again sold on the 26th day of September, 1871, in the name of De Flury, Viscount Clif-
590 ford, and bought by Benjamin Rich and Thorn. Conrow, and a deed was executed to them on the 3d of Oct., 1872. I find this entered on the assessor's land book for the year 1871 in the name of Benjamin Rich with the note in the column headed remarks: Transferred from Flury. I find it charged in 1872–'3 in the name of Benjamin Rich & others; in the book from 1874 to 1878, inclusive, to Benjamin Rich and from that time up to the present in the name of Benjamin Rich and Walter Wood.

17th Ques. Do you know or not whether there was a deed from Fleury to Benjamin Rich?

17 Ans. I have no knowledge of any such deed.

18 Ques. If there was no such deed was the note made in the column under remarks a proper description of the transaction?

18 Ans. I should think not.

Further this deponent saith not.

JAMES WOODZELL.

On motion of B. W. Byrne, counsel for plaintiffs, the taking of these depositions is adjourned until to-morrow morning at 10 o'clock at the same place.

C. P. DORR,
Notary Public.

591 NOVEMBER 2, 1883.

The taking of these depositions in this case was resumed this day at the office of C. P. Dorr, the place named in the adjournment on yesterday and the same place named in the notice.

BERNARD MOLLOHAN, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

By B. W. BYRNE, counsel for the plaintiffs:

1st Ques. State your age, residence, and occupation.

1st Ans. I am 46; Webster Co.; county surveyor & farmer.

2d Ques. Will you be kind enough to state if you have any knowledge of a lease having been made by Allen T. Caperton to Mark Hammons for any lands?

2 Ans. My recollection is Mr. George M. Sawyer and Mark Hammons got me to prepare a lease for certain lands on Williams river claimed by said Caperton. By request of Sawyer some time about the year 1874 I prepared the lease for them.

3d Ques. Will you look at the paper now here shown you and state whether or not it is the paper referred to in your answer to my 2d Ques.

592 3d Ans. I have examined the paper, and I believe it to be the original lease between A. T. Caperton, by G. M. Sawyer, ag't, and Mark Hammons.

4th Ques. Who signed the lease for the leaser, and who for the leasee?

4th Ans. I believe that A. T. Caperton's name was signed by G. M. Sawyer, and Mark Hammons' name to this lease was signed by myself.

5th Ques. At whose request did you sign the name of Mark Hammons?

5th Ans. At the request of Mark Hammons I signed it and he made his mark.

6th Ques. State whether or not you signed the lease as a witness to Mark Hammons' signature.

6 Ans. I did; and the signature which I see on the paper is mine. I also remember seeing G. W. Wolverton sign the lease as a witness.

7th Ques. Will you be kind enough to state the contents of the paper which you say is the original lease between Allen T. Caperton, by his agent, and Mark Hammons.

7 Ans. The lease referred to is in words and figures following:

593 This day I, George M. Sawyer, of the county of Webster, acting as agent for Allen T. Caperton, of Monroe county, all of the State of West Virginia, has for the sum of one dollar in hand paid and other valuable considerations, leased and rented for the said Caperton to Mark Hammons all that certain tract or parcel of land owned by the said Caperton at and around the forks of Williams river, being the same land that William Muller formerly resided on, under the said Caperton, for the term of three years from this date; and the said Mark Hammons is to return the possession of said land peaceably and quiet- to said Caperton whenever called on.

Given under our hands this 8th day of July, 1874.

A. T. CAPERTON,
By GEORGE M. SAWYER, *Ag't.*
his
MARK x HAMMONS.
mark.

Witness:
B. MOLLAHIN.
J. W. WOLVERTON.

8th Ques. Will you be kind enough to state whether or not you find any endorsement made on the back of said lease; and, if so, state what they are.

8th Ans. I find an endorsement on the back of the lease as follows:

594 A. T. Caperton, lease, by George M. Sawyer, to Mark Hammons, on Williams river.

And I further find in the words and figures as follows:

I, Mark Hammons, do hereby assign the within lease to M. J. Stilhen.

Witness my hand this 14th day of May, 1875.

MARK HAMMONS.

I, M. J. Stilhen, do assign one-half the within lease to R. C. Clovenger this Sept. 21, 1876.

On motion of B. W. Byrne, the plaintif-s' counsel, the further taking of these depositions is continued until to-morrow morning at 10 o'clock, at the same place.

NOVEMBER 3D, 1883.

The taking of these depositions was this day resumed, pursuant to adjournment on yesterday, at the office of C. P. Dorr, the place named in the notice and the place specified in the adjournment on yesterday. The testimony of BERNARD MOLLAHEN resumed:

9th Ques. State whether you held any office in the county of Webster in the year 1870; and, if so, what office.

595 9th Ans. I held the office of surveyor of lands for county.

10th Ques. How long have you held the office of surveyor for Webster county?

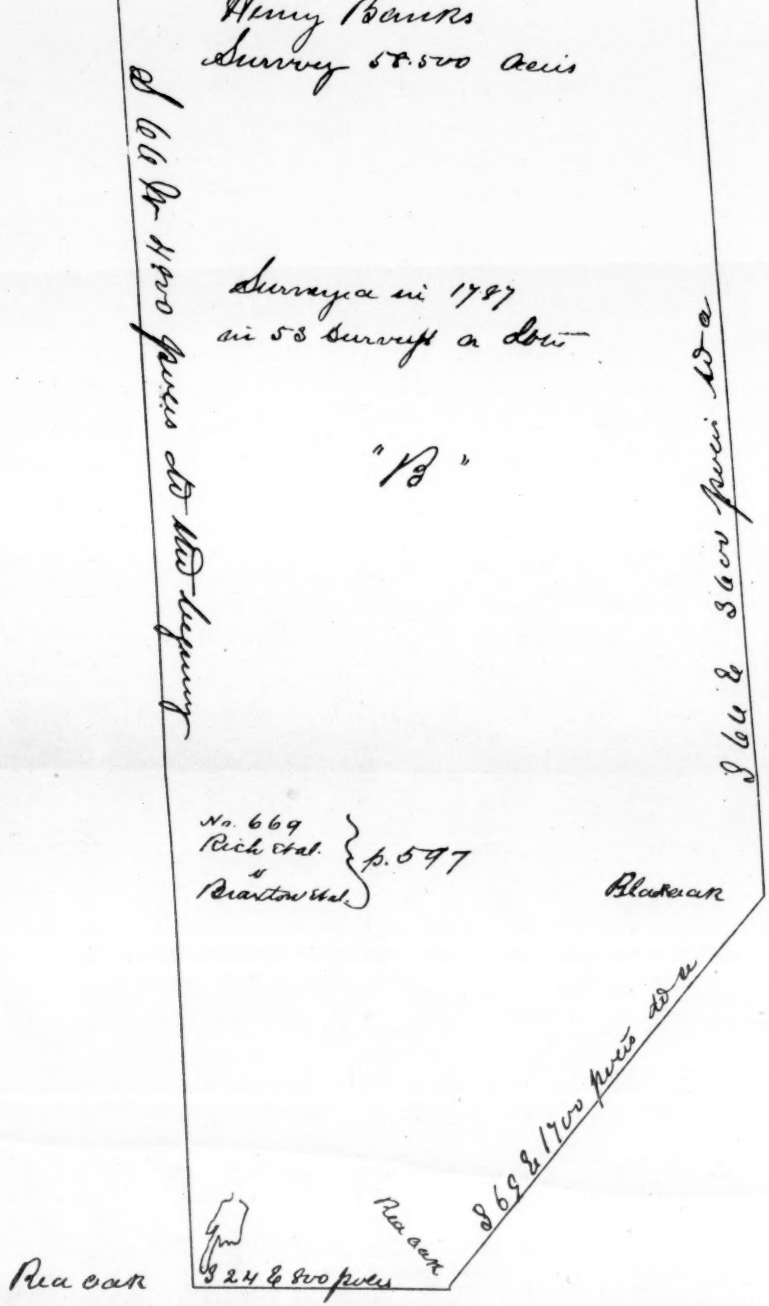
10 Ans. I have held the office of surveyor since 1860 up to the present time.

11 Ques. Will you state whether or not you ever made a report for Benjamin Rich or Benj. Rich and others preparatory to his or others obtaining a deed for a tract of 58,500 acres of land, described in a deed made to Benjamin Rich by the recorder on the 28th of September, 1870, for the tract 58,500 acres, which purports to have been sold by the sheriff of Webster county in the name of Henry Banks for delinquent taxes?

11 Ans. I did make a report for Benjamin Rich as surveyor for the 58,500 acres known as the Henry Banks survey on September 28, 1870, and upon said report Benjamin Rich afterwards obtained a deed for said land from James Woodzell, recorder for Webster county.

12 Ques. Will you be kind enough to describe the report that you made on this land and to whom you made it?

12 Ans. In answer to this question I herewith file a certified copy


Henry Banks
Survey 58.500 acres
Surveyed in 1787
in 53 Surveys a Lott
"B"
S 66 W 4800 poles to the beginning
S 64 E 3600 poles to a
No. 669
Rich et al.
v
Braxton et al.
p. 597
Black oak
S 69 E 1700 poles to a
Red oak
Red oak
S 24 E 800 poles

of my report on the said tract of 58,500 acres, which is
596 marked by the letter "B." This appears to be a true copy of my report.

"See Exhibit B attached."

(Here follows diagram marked p. 597.)

598 STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

SEPT. 28, A. D. 1870.

I, B. Mollahen, surveyor of lands within the county of Webster and State of West Virginia, beg leave to report to the recorder of deeds, &c., in the county and State aforesaid, for Benjamin Rich, assignee in part of Albert Owen and G. B. Shreeve, who conveyed their interest therein to the said Rich, a certain tract or piece of land containing about 58,500 acres, hereinafter described, in order that the recorder may be enabled — to the said Benjamin Rich a deed for the said land as is required by the law of West Virginia in such cases made and provided. The said tract of land was sold on the 24th day of September, 1869, by C. McDodrell, then sheriff of said county of Webster and State of West Virginia, for the taxes due thereon to the State of West Virginia for the year 1868 in the name of Henry Banks; amount of taxes, $10.95 *cents;* amount of purchase-money paid to the said sheriff, including interest, damages, commissions, and fee for receipt, $11.20; and at said sale the said
Albert Owen, G. P. Shreve, and Benjamin Rich became the
599 purchasers of said tract of land, all of which will more fully appear by reference to the said sheriff's receipt bearing date September 24th, A. D. 1869; which said report is hereto attached as part hereof.

The said tract of 58,500 acres of land as aforesaid lies on Elk, Holly, & Gauly rivers, in the said county of Webster and State of West Virginia, formerly in Randolph county, Va., and was in said county of Randolph surveyed for Henry Banks in the year 1787 in 53 tracts or lots; said tract adjoins the lands of Wm. McClary and others and bounded as follows:

Beginning at a red oak on the north side of Gauley river, running thence south 24 east 480 poles to Gauley river, crossing the same; same course 320 poles to a red oak standing between Gauly and Williams river; distance on this line, 800 poles;

Thence south 59 east 1,700 poles to a black oak, thence N. 66 east 3,600 poles to a sugar, thence N. 2 E. 993 poles to a stake, thence N. 24 W. 800 poles to a poplar, thence S. 66 W. 400 poles to a poplar, thence N. 24 W. 400 poles to a sugar, thence S. 66 W. 4,800 poles, crossing Elk river, to the beginning, containing 58,500 acres.

Respectfully submitted.

600 B. MOLLAHEN, *S., W. C.*

STATE OF WEST VIRGINIA,
WEBSTER COUNTY CLERK'S OFFICE.

I, B. P. Conrad, clerk of the county court of said county, do hereby certify that the foregoing plat and report are true copies from the record in my said office.

Given under my hand this 22 day of November, 1883.

B. P. CONRAD, *Clerk.*

601 13th Ques. Was the deed which you describe by the recorder, Woodzell, to Benjamin Rich, so far as the calls, bearings, local description, &c., made in pursuance to your report?

13th *Ques.* From the recorded deed in Deed Book No. 1, ps. 399, &c., the local description appears to be the same as in my report, and the bearings in same appear to be the same as in the report, except that there appears to be one course and distance that is not found in my report, which course and distance reads as follows: "N. 24 W. 400 poles to a poplar." This course should have been left out of the deed.

Further this deponent saith not.

B. MOLLOHAN.

STATE OF WEST VIRGINIA, *County of Webster,* } *ss:*

I, C. P. Dorr, a notary public in and for the county and State aforesaid, do certify that the foregoing depositions of B. P. Conrad and others were taken, sworn to, and subscribed before me at the time and place and for the purposes stated in the caption hereof (and the notice of adjournment therein mentioned).

Given under my hand this the third day of November, 1883.

C. P. DORR,
Notary Public.

And on another day, to wit, on the 5th day of May, 1884, the following depositions were filed in the clerk's office, to wit:

602 In the Circuit Court of the United States for the District of West Virginia.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Chancery.

Be it known that at an examination in the above-entitled cause before me, a United States commissioner for the District of Columbia, pursuant to notice hereto annexed, personally appeared James Gilliland, the witness within named on behalf of the plaintiffs, and, after the witness had been duly sworn to speak the truth, the whole truth, and nothing but the truth touching the matters in issue, the within deposition was written down by me from the statements of the witness, read to him, and signed by him in my presence and in the presence of counsel.

I am not of counsel for any of the parties to the suit or in any way interested in the result thereof.

James H. Ferguson, Esq., appeared for plaintiffs and Andrew C. Bradley, Esq., for defendants.

JNO. CRUIKSHANK,
U. S. Commissioner.

[SEAL.]

In the Circuit Court of the United States in and for the District of West Virginia, Sitting at Parkersburg, in said District.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.*
} In Chancery.

To the above-named defendants:

Take notice that on the 22nd day of April, 1884, between the hours of 8 o'clock a. m. and 6 o'clock p. m., at the office of Gordon & Gordon, Nn. 330 4½ street, Washington city, D. C., the plaintiffs in the above-entitled suit in chancery, which suit is now
603 pending and undetermined in the above-named court, will commence taking the deposition of James Gilliland, to be read in evidence in their behalf at the hearing of said suit, and if for any cause said deposition is not commenced on that day, or, if commenced, is not completed on that day, we will continue the commencement and taking thereof from day to day, Sundays excepted, at the place and between the hours above stated, till it is completed.

Dated this 5th day of April, 1884.

TAMLIN BRAXTON ET AL.,
Plaintiffs,
By JAMES H. FERGUSON,
Their Counsel.

Executed on this 8th day of April, 1884, by serving a copy hereof upon Caleb Boggess, at Clarksburg, W. Va., attorney for the within-named Benjamin Rich *et al.*, defendants.

GEO. W. ATKINSON,
U. S. Marshal,
By W. H. RAMP, *Deputy.*

In the Circuit Court of the United States for the District of West Virginia, Sitting at Parkersburg, in and for said District.

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.*
} In Chancery.

The deposition of James Gilliland, taken at the office of Gordon & Gordon, No. 330 Four-and-a-half street, Washington, D. C., on the 22nd day of April, 1884, in pursuance of the annexed notice, to be read as evidence on the hearing of a suit in chancery now pending in the above-entitled court, wherein Tamlin Braxton *et als.* are plaintiffs and Benjamin Rich *et als.* are defendants, on behalf of the said plaintiffs.

Present: James H. Ferguson, attorney for the plaintiffs, and Andrew C. Bradley, attorney for the defendants.

JAMES GILLILAND, being duly sworn as a witness on behalf of the plaintiffs, deposes and says:

(By plaintiffs' counsel:)

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is James Gilliland; I live in Montgomery, Maryland; age, 80; occupation, well, you may say a farmer.

604 Ques. 2. Are you acquainted with the parties to this suit or any of them?

Ans. Benjamin Rich is the only one of the parties I know. I knew the old man, Mr. Caperton, but I do not know any of his children.

Ques. 3. Are you acquainted with John B. Shreve, of Upshur county, West Virginia?

A. Yes, sir.

Ques. 4. Are you acquainted with his son?

A. No, sir; I am not acquainted with his son. He had one son whom I saw once or twice, but I was not acquainted with him.

Ques. 5. If you know anything in relation to the entry of several large tracts of land in the State of West Virginia, situate in Webster and adjacent counties, on the land books of said county for taxation, in or about the year 1868, by the above-named John B. Shreve or his son, G. P. Shreve, or at the instance of either of them, and of the purpose for which such entries were made, state all you may know in relation to it and the persons, if any, concerned with said Shreve in making said entries and in the purposes thereof, and what was done, if anything, in pursuance of such entries, after the same were made.

(Objected to by Mr. Bradley on the ground that the bill charges a conspiracy between defendant Rich, G. P Shreve, and Albert Owen, and that any testimony of the acts of John B. Shreve is irrelevant, immaterial, and incompetent.)

Ans. I became acquainted with John B. Shreve in 1866, I think.

I was referred to him to show me a tract of land in Webster county. He went with me to Webster county, with myself and Capt. Fuller, of Pennsylvania, who was with us. He went over the land with us, and he showed us on that occasion a book which he said was the book of Mr. Jackson, an old surveyor, in which were the plots of several large tracts of land, which he represented as lying
605 in Webster and adjacent counties. We went to look at a tract of 80,000 acres in Webster county, called the Budd tract. He said that the owners of the several tracts he showed us in that book owed for taxes and that they could be put upon the tax-lists and sold for the taxes on them. I cannot give the names of the tracts he showed me. I have forgotten.

In 1867, in company with Col. Huling, Capt. Jamison, Dr. Green, William McClennan, and James Huling, we went over the same tract again and had John B. Shreve with us again. I am speaking of the Budd tract, and John B. Shreve talked to Mr. Huling and Jamison in my presence. I took no part in the conversation. He talked to them about those old tracts, and told them that they could be surveyed and put on the tax book and sold for taxes, and title to them could be obtained in that way. They told him they would go into the thing if they could get the title in that way, and that they would pay him for his services or anything that he might do in relation to the matter for them, and there was nothing further said or done then. They returned home to Pennsylvania and I came to Washington. I lived in Washington then. On my return here I had a correspondence with Shreve. About the amount of that correspondence was I inquired of him. If the letters were preserved they were burned. My house was burned and I suppose the letters were burned with it. My papers were all burned. I inquired of him if he could give me the names of any of the original owners of the lands he had spoken about to Huling, Jamison, and myself. He wrote to me that one tract had belonged to a family named Thomas that lived in Maryland. I don't recollect that he gave me the names of any of the others, but I recollect that one particularly. Well, when I couldn't get a title from the original owners of this tract I did not go into the matter of getting a title by the tax sales. I declined to go into that operation. Some time after that—probably the next year; I think it was in 1868—Col. Huling wrote me.
606 Well, then, I will go — the year 1869: Some time in the early part—I think it was in the summer of 1869—I met Col. Huling, Mr. Henry Brokerhoff, James Huling, Edmund Blanchard, and I don't know whether there were any others or not; perhaps one or two more; they were all Pennsylvanians. I was then superintending the erection of a boom on Elk river, West Virginia, for the same parties. They showed me the plats of several tracts—four, I think. I am not positive as to the number, but I think it was four plats of land in Webster, and one tract at least extended, I think, over into Pocahontas county—I believe that is the adjoining county—which lands they said John B. Shreve had surveyed under an agreement with them, and they were placed on the county books for sale, and were to be sold in a short time afterwards. They had

several letters from Mr. Shreve, which they handed me at the same time with the plats, in which he stated that they were to be sold in a short time. They had also their agreement with Shreve, and one of Shreve's sons was in the agreement as connected with it—as one of the partners. They had my name also in the agreement as one of the parties—put there without my knowledge and consent. They informed me afterwards, and I declined to have anything to do with it. They had paid John B. Shreve $1,200 up to that time, so they told me, and I think the papers showed that. They called on me for $100 apiece. They had each paid $100 apiece, they said. I think there were 12 of them. As far as I can recollect, the parties were Col. Huling, James Huling, Henry Brockerhoff, Dr. Ellis Green, and the son of Shreve; his first name I don't recollect. I know he was to be an equal partner with the others, but I don't remember whether his name was in the agreement. Philip Gallagher was one of them. I am not sure whether Jamison was in that agreement or not. He was urging them for another payment—another payment was due—and he was urging them for payment.

I suppose it was the final payment, but I do not know.

607 Well, they put the papers all into my hands and requested me and authorized me to see Shreve before they paid any more money, and after seeing him and investigating the matter, if I was satisfied that his proceedings were all straight and honest and right, I was authorized to pay. I should state that they had heard that other parties were paying him for doing the same thing.

Well, I wrote to Shreve to come down to Charleston to see me—that the parties had authorized me to pay him and to attend to the business for them, and to come down to see me. I got an answer to that letter, in which he stated that he could not leave home. I then wrote to him that I would meet him in Clarksburg, and appointed a time when I would meet him there. I got an answer, in which he stated that he could not go to Clarksburg—in which he gave some reason. I don't recollect what the reason was that he couldn't attend. It was then drawing near to the court—the court in Webster county, in which the lands were advertised to be sold, and I wrote to him that I would meet him there. Well, I went up to the court in company with James Huling. I got to Webster courthouse about the middle of the day, on Tuesday. I inquired for Shreve, and was told he was there. I found him in a house—perhaps the house of the clerk of the court; I don't know. He was engaged in writing when I went in. There were several persons in, and he seemed to be very much engaged, and I told him I would talk with him again when I had another opportunity, and I went out. I didn't say any more to him then. I went to look at the tax-lists—at the lists of lands for sale. I looked over the lists and found these tracts that I had plats of were all down on the list to be sold. I don't remember the names of the tracts. There was one tract of over 150,000 acres that extended over into Pocahontas county, I think. I think there were two or three of the tracts, perhaps all, I am not certain, on which was written in pencil "taxes paid." It was writ-

608 ten where they were entered for sale—written under the name

of the tract in a book in the office of the sheriff, I think—a book lying on a table. I was shown it by Judge Holt, who was then a practicing lawyer. I was acquainted with him, and he went with me to show me where the books were. I understood the sale was to be either on Wednesday or Thursday. I don't remember which. The day I was there and looked over the books was Tuesday. I then tried to find John B. Shreve. I had great difficulty in finding him, but finally found him at the court-house. I told him what the parties he had contracted with had authorized me to pay him, if everything was right—if he had proceeded right in the matter. I told him I knew he had been surveying for one other party, at least. That was Welsh. I knew he had surveyed for Welsh. Welsh's nephew was with him, and I told him if he had been receiving money for doing the same thing that he had engaged to do for Huling and his party that he ought not to be paid. I told him that I had told the parties, and that they had authorized me to pay him, if he had acted honestly, whether he was mistaken in judgement or not as to whether a title obtained by a tax sale would be good. He was very mute. He said but very little. He did not deny what I said about acting for others. There was one tract he said that they could have. I think it was the big tract. I didn't wait for the sales. I made up my mind to return the papers to the parties who had given them to me and advise them not to pay any more money. I did not stay to bid on the lands, but I told him he had better refund to the parties what he had received from them; that if he didn't he might have trouble about it. I returned all the papers to Col. Huling. Welsh lived in Washington at that time. We were neighbors and boys together in Pennsylvania. He is dead now. McClenahan, who was with Shreve in making the survey—the last I heard of him—was living in Michigan.

609 I don't know that young Mr. Shreve was with Shreve at Webster court-house on the occasion referred to. I met him in Webster county. He was out showing some persons who were interested in the land. He was out with them. I passed them by, and after that again I saw him in Bellefonte. He was with some of the parties interested in this land. I am not certain which of them. I am not certain it was not Mr. Rich. My impression is that he got into the train at Bellefonte and went up to where Mr. Rich lived. I should say that I was told this.

I don't think I saw young Shreve, as far as I know, with any of the defendants. I cannot say that I saw him with Mr. Rich. I saw him in the winter time and it was after I was at Webster court-house.

(Mr. Bradley objects to the entire answer down to this period as incompetent, irrelevant, immaterial and irresponsive.)

At Webster court-house at the time of the tax sales I met McClenahan. I was introduced to Mr. Owens, of Pennsylvania, who was then living in the county where I lived, and I met Mr. Rich, with whom I was acquainted.

Ques. If you had any conversation with Mr. Rich about the lands advertised for sale for taxes state it.

(Objected to as incompetent.)

A. I talked with him, and the reason I talked with him was that he was a stranger in that country and a man whom I had always a high respect for, and my reason for talking with him was to give him my opinion about the lands advertised for sale. I cannot tell you what I said to Mr. Rich or Mr. Rich said to me, but the substance of it all was that I told him I did not think he could get a good title by a tax sale. My object was to give him my opinion. I understood from Mr. Rich that he was there to purchase lands at a tax sale, and I thought I would give him my opinion, and cautioned him about buying these lands.

(Cross-examination waived.)

And further deponent saith not.

JAS. GILLILAND.

610 Sworn to and subscribed before me this 22nd day of April, 1884.

JNO. CRUIKSHANK,
[SEAL.] *U. S. Commissioner.*

And on another day, to wit, on the — day of ——, 188–, the following depositions were filed in the clerk's office of said court:

In the Circuit Court of the United States for the District of West Virginia, Sitting at Parkersburg, in said District.

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.*
} In Chancery.

The defendants in the above-entitled suit will take notice that on the 20th day of November, 1884, between the hours of 9 a. m. and 6 o'clock p. m., at the law office of William Carper, in the town of Buckhannon, in the county of Upshur, State of West Virginia, the plaintiffs in the said suit will commence taking the depositions of John B. Shreve, G. P. Shreve, and Brown M. Yeager, to be read as evidence on their behalf on the hearing of said suit; and if for any cause said depositions are not commenced on that day, or, if commenced, *and* not completed on that day, the taking thereof will be continued from day to day and from time to time, Sundays excepted, till they are completed at the place and between the hours aforesaid.

Dated this 6th day of November, 1884.

TAMLIN BRAXTON ET ALS.,
Pl'tiffs, by Counsel.

Served the within notice by delivering a copy thereof to Caleb Boggess, counsel for Benjamin Rich, on the 13th day of November, 1884.

WM. R. ALEXANDER, *Deputy*,
For G. W. ATKINSON,
U. S. Marshal, W. Va.

611 Depositions of witnesses taken before me, G. M. Fleming, a notary public in and for the county of Upshur and State of West Virginia, pursuant to the notice hereto annexed, at the law office of William Carper, in the town of Buckhannon, county and State aforesaid, on the 20th day of November, 1884, between the hours of 9 o'clock a. m. and 6 o'clock p. m., to be read as evidence on behalf of the plaintiffs in a certain suit in chancery depending in the circuit court of the United States in and for the district of West Virginia, sitting at Parkersburg, in said district, in which suit Tamlin Braxton and others are plaintiffs and Benjamin Rich and others are defendants.

Present: B. W. Byrne, counsel for plaintiffs, and Caleb Boggess, counsel for defendants.

JOHN B. SHREVE, a witness of lawful age, being by me first duly sworn, deposes and says:

1st Ques. by plaintiff's counsel. What is your age, occupation, and place of residence?

Ans. I am past 78 years of age. By occupation I have been a farmer and surveyor. My place of residence is Upshur county, West Virginia.

On motion of parties, further taking of these depositions is continued until November the 21st, 1884, at the same place and between the same hours.

Given under my hand this 20th day of November, 1884.

G. M. FLEMING,
Notary Public.

WILLIAM C. CARPER'S LAW OFFICE,
BUCKHANNON, UPSHUR COUNTY, WEST VA.,
10¼ A. M., *November 21st*, 1884.

Present: Col. B. W. Byrne, counsel for plaintiffs, and Caleb Boggess, counsel for defendants.

612 2nd question by plaintiffs' counsel to the witness JOHN B. SHREVE, whose examination is resumed:

Will you be kind enough to state whether or not you are acquainted with the lands lying in Webster county; and, if so, whether you have had anything to do with the management of said lands.

Ans. I am acquainted with the lands in Webster county, somewhat. I have surveyed some of the tracts.

3rd. Ques. State whether or not you ever entered on the assessor's books of Webster county for taxation any lands; and, if so, please state the various tract or tracts so entered by you, and for what year or years.

Ans. I did enter lands for taxation on the books of Webster county. I entereed tracts all over the county. I entered one tract in the name of Joseph Patterson, containing 187,000 acres; one tract in the name of William McClary, containing 100,000
613 acres. My impression is I entered 53 tracts, containing 58,500 acres, in the name of Henry Banks. My impression is I entered the 58,500 acres in one tract, but I am not certain. The books will show.

4th Q. State whether or not you entered for taxation in the assessor's books of Webster county for the year 1868 three tracts of land in the name of Joseph Say and Zebaline Curtis, each containing 25,000 acres.

Ans. My impression is I put it down; I mean the 3 tracts containing 25,000 acres each. I paid the fees to the assessor in 1868, and it was before I paid the fees that I entered said tracts. The books will show.

5th Q. Did you or not in the year 1868 enter for taxation in the assessor's books of Webster county, in the name of Robert Patton, a tract of 50,000 acres of land?

Ans. I entered said 50,000-acre tract in the name of Robert
614 Patton; that is my impression. I don't know whether it was in 1868, but the books will show.

6th Q. State whether or not you entered a tract in said county for taxation in the year 1868, containing 5,132 acres, in the name of Benjamin Reeder.

Ans. Reeder has several tracts, and whether I put all of them down or not I don't know. I put some of them down. I have only memory to go by. Of all the tracts I put down from first to last I footed up the bill in 1868; that is my recollection. What I put down of said Reeder tracts I put down in the name of Benjamin Reeder.

7th Q. State whether or not you entered for taxation, in the name of Benjamin Reeder, in the assessor's books of said county, in the year 1868, a tract of 5,868 acres.

Ans. My impression is I put some of the Reeder tracts down in the name of Benjamin Reeder. As for the date the books will show.

615 8th Q. State whether or not you entered for taxation in the assessor's books of Webster county, in the name of Wm. C. Cooper, a tract of 2,000 acres of land in the year 1868.

Ans. I don't recollect.

9th Q. State whether or not you entered for taxation in the year 1868, in the assessor's books of Webster county, a tract of 750 acres in the name of Elizabeth Brandred or Elizabeth Brundred.

Ans. My impression is I did, according to my recollection. The books will show as to date. I think it was in the name of Elizabeth Brundred.

10th Q. State whether or not you entered for taxation a tract of land, in the assessor's books of Webster county for the year 1868, in the name of Joseph Messingberg, of 12,500 acres.

Ans. I don't recollect. The books will show. I can't recollect so many little tracts. The assessor's book will show.

616 11th Q. Did you or not enter for taxation in the year 1868, in the assessor's books of Webster county, in the name of James Ewing, a tract of land containing 1,000 acres?

Ans. I don't recollect whether I put it down or not. The record will show.

12th Q. State whether or not you entered for taxation in the assessor's books of 1868 of Webster county, in the name of Wm. Chambers, a tract of land containing 3,917 acres.

Ans. I don't recollect.

13th Q. State whether or not you entered for taxation in the assessor's books of Webster county for the year 1868, in the name of James Welsh, a tract of land containing 105,000 acres.

Ans. I may have done so, but the record will show. I ain't certain.

14th Q. State whether or not you entered for taxation in the assessor's books of Webster county for the year 1868, in the name of William Bridges, a tract of land containing 300,000.

Ans. I may have done so. The reecord will have to show. I can't recollect everything.

617 15th Q. State whether or not you entered for taxation on the assessor's books of Webster county for the year 1868, in the name of Alexander Walcott, a tract of 70,000 acres of land.

Ans. I can't say; I don't recollect positively whether I did or not. The books and records will have to show.

16th Q. State whether or not you entered for taxation on the assessor's books of Webster county for the year 1868, in the name of Vanderpool, a tract containing 27,000 acres of land.

Ans. I don't recollect whether I did or not; I have no recollection of it.

17th Q. State whether or not you entered for taxation on the assessor's books of Webster county for the year 1868 a tract of land containing 90,000 acres, in the name of Homes, Gales, & Harness.

Ans. I may have done so, but I won't be certain.

The defendants except to all the foregoing questions and answers except the first and second because the same are irrelevant to the matters in issue and because no foundation has been laid for them, the matter of them being not primary, but merely secondary evidence.

618 18th Q. Will you be kind enough to state, if you remember, who the assessor of Webster county was when you entered these lands?

Ans. I think it was a Hamrick. The record will show. I have his receipt for putting the land on the books.

19th Q. Do you or not recollect whether you paid any of the assessor, Hamrick's, fees to P. F. Duffy?

Ans. I did. He left his account with Duffy, and I paid Duffy.

20th Q. Will you state by whose authority and direction you had these lands entered?

The defendants except to the foregoing question because it is irrelevant.

Ans. I recollect that Mrs. Brundrerd was one; also Thomas' heirs, and Haywood, and a lady from Philadelphia; a man by the name of Clark & Co., from New York, a man by the name of Welsh. Patton, heir to the 50,029-acre tract, was to see me. I had many other letters, but they were burned in my house and I can't lay hands on them.

619 21st Q. How did you get the boundaries and descriptions of those lands.

Defendants except to the foregoing question for the reason that it is irrelevant.

Ans. I have the record—the original records.

22d Q. Will you state what original records you refer to?

Ans. I refer to the surveyor's land book of Randolph county—the original record; you may call it what you please.

23d Q. State how you came in possession of what you call the original record or surveyor's land book of Randolph county and how you know it to be the original record.

The defendants except to the forogoing question because the same is irrelevant.

Ans. I got it from Henry Jackson, the second surveyor of Randolph county, who was with me over those mountains and showed me many of those corners. The book says it is the record of Randolph county, and all those surveys that they are fussing about are in it, and Henry Jackson told me that that was the record of

620 himself and his brother, Ned Jackson, the first surveyor of Randolph county. The book shows for itself what it is.

23d Q. Are not the original records of the surveying done in Randolph county when these surveys were made now to be found in the office of the surveyor of Randolph county?

Ans. The records now in the office of the surveyor of Randolph county are a copy of the book that I referred to and now in my possession.

24th Q. How do you know that you have the original book and that it is only a copy that is now in the office of the surveyor of Randolph county?

Ans. Henry Jackson said that they wrote a bad hand and they had to have it copied, and they frequently refer from Beverly to this book.

25th Q. In procuring the entry for taxation in the land books of Webster county of the numerous tracts of land you say you had placed upon the land books of said county, did you or not have

them entered in the names of the parties for whom the sur-
621 veys were made or in the name of the grantees of the several tracts?

The defendants except to the foregoing question because it is irrelevant and because it is leading.

Ans. The most of them were entered in the name of those having the surveys made. Some of them were entered in the name of the grantees.

26th Q. State whether or not you know whether the various tracts of land entered by you for taxation in Webster county were sold by the sheriff of said county for the delinquent taxes thereon or any of them.

The defendants except to the foregoing question because it is irrelevant and because it is secondary and not the best evidence.

Ans. I suppose that a good many of them were sold for delinquent taxes. I was at Webster Court-House when they were sold.

27th Q. State whether or not you ever made any arrangement with any parties, either verbally or by correspondence, in regard to the purchase of these lands when they should be sold
622 by the sheriff for the delinquent taxes thereon, and, if any, what arrangement did you make with such parties.

The defendants except to the foregoing question because it is immaterial and irrelevant.

Ans. I never did.

28th Q. You say you have surveyed some of the tracts in Webster county. Will you be kind enough to state what tracts you surveyed and for whom you surveyed them?

Ans. I surveyed one tract for John Ambler. I surveyed one tract for Clark & Co. The Clark & Co. tract was 5,000 acres, down on Elk. I surveyed the Tidball tract of 80,000 for Ambler. I made the 80,000-acre survey in the year 1847. I made the survey for Clark & Co. a good while before these tax sales took place. I have tried some lines on other surveys, but that will do.

29th Q. State whether or not you ever surveyed the Wm. McCleery tract which you entered for taxation.

Ans. I never did.

30th Q. State whether or not you ever surveyed the Homes,
623 Gale, & Harness tract, which you entered for taxation.

Ans. I run some of the lines. I had it done. The Homes, Gale, & Harness tract is 100,000 acres. Of this Thomas owns 90,000 acres and a man in Baltimore owns 10,000 acres.

31st Q. Will you state for whom you run the Homes, Gale, & Harness tract?

Ans. There was a man came and had some of the lines run. I forget his name. I now recollect that it was Mr. Callahan.

32d Q. What lines did you run on the Homes, Gale, & Harness tract?

Ans. I ran the northwest line. I also ran or had run the line

between the Homes, Gale, & Harness tract and the McCleery tract. I also ran two or three lines from the hickory corner.

33d Q. State whether or not you ever ran any other of the lines than those named of the McCleery tract of 100,000 acres.

Ans. I did not run any lines of the McCleery tract except such as I ran while running the Homes, Gale, & Harness tract.

624 34th Q. Will you state whether or not you ever ran any of the lines of the Messingburg tract of 125,000 acres; and, if so, what lines?

Ans. I did run a few lines. I have forgotten now how many. I run from Gauley over to Williams river or had it done. That is my recollection. I also run another line or two. I ran those lines for Albert Owen to find the lines or corners of the Welsh.

35th Q. State whether or not you ever surveyed the Welsh 105,000-acre tract; and, if so, for whom.

Ans. I ran a few of the lines. I did the running on the Welsh survey for Albert Owen. He paid me.

The defendants except to the foregoing question because it is immaterial.

36th Q. Please state whether or not you ever ran any of the lines of the Henry Banks survey of 58,500 acres or any of its subdivisions.

Ans. I run two lots off. I think they were 1,000-acre lots.

37th Q. For whom did you run the two said lots?

625 Ans. I only recollect one of the names; McCandlish was one, from the valley of Virginia.

38th Q. Will you please state whether you entered on the assessor's books for taxation in Webster county, for the year 1870, any lands in addition to those stated in your former answers; and, if so, please state what tracts they were and in whose name entered.

The defendents except to the foregoing question because it is irrelevant.

Ans. I have no recollection of it.

39th Q. State whether or not you entered for taxation on the assessor's land books for Webster county, for the year 1870, a tract of 50,029 acres in the name of Robert Patton.

Defendents except because irrelevant.

Ans. It was put on the land books by my order, I think, for some year, but I can't tell just the year. The books will show.

40th Q. State whether or not you entered for taxation on the assessor's land books of Webster county, for the year 1870, a
626 tract of 200,000 acres in the name of Charles Sims and Charles Lee.

Defendents except because irrelevant.

Ans. I can't say; you will have to go to the record. I can't remember so much. I won't say positive whether I did or not. The assessor's books will tell.

41st Q. State whether or not you entered for taxation on the assessor's land books of Webster county, for the year 1870, a tract of 100,000 acres in the name of Alexander Walcott.

Defendents except because irrelevant.

Ans. I don't know the date. It seems to me I put the Walcott — down, but I am not certain except that to my recollection Walcott only owned 70,000 acres out of the 100,000-acre survey.

42d Q. State whether or not you entered for taxation on the assessor's land books of Webster county, for the year 1870, one other tract of 100,000 acres in the name of Alexander Walcott.

Defendents except because irrelevant.

627 Ans. I don't recollect any more than entering the 70,000-acre tract.

43d Q. State whether or not you entered for taxation on the assessor's land books of Webster county for the year 1870 a tract of 70,000 acres in the name of Alexander Walcott.

Defendants except because irrelevant.

Ans. My impression is that I put down the 70,000-acre tract.

44th Q. State whether or not you entered for taxation on the assessor's land books of Webster county for the year 1870 three separate tracts, one for 5,132 acres, one for 5,868 acres, and one for 5,000 acres, in the name of Benjamin Reeder.

Defendants except because irrelevant.

Ans. I told you awhile ago that there were some of the Reeder tracts put down by me, but I don't recollect how many.

Continued until Nov. 24th, 1884.

G. M. F.

628 2 P. M., NOV. 24TH, 1884.

Present: B. W. Byrne, counsel for plaintiffs, and the defendant Benjamin Rich in person.

Examination of JOHN B. SHREVE resumed:

45th Q. State whether or not you did any more surveying in Webster county than you have stated in your former answers on the surveys which you entered for taxation.

Ans. The last surveying I did that I remember, on looking at my field-notes, was on the Bowen survey of 30,000 acres. I don't know whether I entered this tract for taxation or not. I did it for Judge Haywood.

46th Q. You say you ran a few of the lines of the Welsh survey? Please state whether you ran all around it.

Ans. I did not.

47th Q. Are you sure that it was Albert Owens that paid you for your services for running on the Welsh land?

629 Ans. I said it was Albert Owens that paid me. He was on the ground and started me. He gave me the courses and distances.

48th Q. State, if you know, where the Welsh land referred to lies and how much it contains.

Ans. The record says 105,000 acres—the old record—but I don't know how it holds out. I go by the record. It lies on the Elk and Gauley rivers and touches Williams river. It runs into Randolph county, but the most of it is in what is now Webster county. It used to be Randolph. I ran part of one line of the Joseph Patterson survey of 187,000 acres.

49th Q. When did you run on the Joseph Patterson survey?

Ans. I don't remember.

50th Q. For whom did you run it?

Ans. I don't recollect.

51st Q. Do you remember the year in which the Webster
630 county lands were run by your two sons?

Ans. I don't know. I do not have the field-notes.

52d Q. Was it before the sale of delinquent lands for taxes in 1869 or afterwards?

Ans. My recollection is that it was afterwards. I have not the dates. It was after the sale, anyhow.

52½ Q. Will you state whether or not you were present at the sales by the sheriff of Webster county for 1869 for the delinquent lands which were entered by you for taxation in 1868 in that county?

Ans. I was at one of the sales. I don't know how many sales there were, any more. There were two sales, I reckon.

53d Q. Were you at the sale of delinquent lands for Webster county in 1869?

Ans. There was more than one sale. I dare not say at which one I was there. I was at some of them.

631 54th Q. State whether or not you were there when the lands you entered for taxation in 1868 were sold.

Ans. If I had any way of knowing when certain tracts were sold I could tell; but I can't be certain.

55th Q. Were you there or not when the lands you entered were sold?

Ans. They may have been sold at different times; I can't tell.

56th Q. Will you state whether or not you were present when Benjamin Rich bought a tract of 100,000 acres, known as the McCleary tract, at the sale of delinquent lands for taxes?

Ans. It is hard for me to tell. There was another man with Rich, and which each was knocked off to & how they divided it I can't tell.

57th Q. Who was the man that was with Mr. Rich?

Ans. It was Owen—Albert Owen. The books will show which it was knocked off to.

58th Q. Were you present when the McCleery tract was sold at delinquent tax sale?

632 Ans. I can't say whether I was there or not.

59th Q. Were you or not present at the sale of delinquent

lands by the sheriff of Webster county in 1869; &, if so, was a tract of 58,500 acres sold in the name of Henry Banks or not?

Ans. There is a record there, & I don't now recollect of any individual tract being knocked off to anybody; I can't remember.

60th Q. State whether or not you know of your son, Granville P. Shreve, buying a tract of land at the said sale in Webster county in the year 1869 or a part of a tract or an interest in a tract; &, if so, state what tract.

Ans. I don't know of his buying any; I don't know how it was. He can tell you. If he got any interest it was others that let him have it. I have no record to go by; I took no notes.

61st Q. You say that if he got any interest others let him
633 have it. What do you mean by others letting him have it?

Ans. I say that if he had any interest he paid no money that I know of. I know of his paying no money.

62d Q. Whom do you mean by "others" when you say that others let him have it?

Ans. I don't know. I know of his paying no money. I don't know.

63d Q. Will you state whether or not you recollect of the sale by the sheriff of Webster county in 1869 of a tract of 187,000 acres in the name of Joseph Patterson; &, if so, by whom it was purchased?

Ans. It was sold, but I don't know who got it. I have no record to show.

64th Q. State whether or not you were present at the delinquent land sale of 1871 for Webster county at the sale of a tract of 200,000 acres sold in the names of Charles Simms & Charles Lee.

Ans. I don't recollect. I have no means of knowing. I
634 have no paper.

65th Q. Look upon the map marked Exhibit "X Y," which is here filed as part of your deposition, and state whether or not the following tracts of land are laid down in their proper positions with reference to each other & as they call for each other & with reference to the counties, water-courses, &c., thereon named, to wit, a tract known as the Wm. McCleery tract of 100,000 acres, marked K 21, 22, 23, 24, 25, 26, 27, & to K on the plat; a tract known as the White & Dowthard tract of 50,000 acres, marked L M G N L on the plat; one other tract known as the White & Dowthard tract of 50,000 acres, marked D J K L M & to D on the plat; a tract known as the Wm. Bowen tract of 30,000 acres, marked N 1, 2, 2, and to N on the plat; a tract known as the James Welsh tract of 105,000 acres, marked 3, 4, 5, 6, 7, 8, & to 3 on the plat; a tract known as
the Bridges tract of 30,000 acres, marked G 9, 10, 11, 12, 13,
635 14 G on the plat; a tract known — the Messingberg tract of 12,500 acres, marked 3, 15, 16, 17, 18, 19, 20, 3 on the plat.

Caleb Boggess, counsel for defendants, appeared.

Adjourned until Nov. 25th, 1884.

G. M. F.

9½ A. M., NOV. 25TH, 1884.

Present: B. W. Byrne & Caleb Boggess.

Examination of JOHN B. SHREVE resumed:

Question 65 continued. A tract known as the Henry Banks tract of 58,500 acres, subdivided into 53 tracts and marked 23, 24, 25, 28, 29, 30, 31, 32, and to 23 on the plat; 3 tracts described as the Fay & Curtis tracts, the first marked with the letters A B C D on the plat, the second A E F G on the plat, the third marked E H I F on the plat, containing 25,000 acres each; a tract known as the
636 Homes, Gale, and Harness tract, 100,000 acres, marked K J D C H J and to K on the plat; a tract known as the Sims & Lee tract of 200,000 acres, marked J X Y Z & K and to J on the plat; a tract known as the Joseph Patterson tract of 187,000 acres, marked 2, 5, 7, 9, and to 2 on the map; a tract known as the Walcott tract, marked D H 2 4 and to D on the map, containing 100,000 acres; a tract known as the Walcott tract of 70,000 acres, marked 4, 5, 6, 7, H 2, and to 4 on the map; a tract of 30,000 acres, known as the Walcott tract, marked D 7, 6, 5, and to D on the map, and one other Walcott tract of 100,000 acres, known as the Walcott —, marked J X O W and to J on the map.

Ans. I have examined said map. The McCleery tract of 100,000 acres, as laid down thereon, marked as aforesaid, is near right according to my knowledge of that section. The
637 White & Dowthard tract of 50,000 acres that corners at hickory at Fork lick should be changed from Fork lick, as shown on the map, to the birch on Gauley river. The two White & Dowthard tracts are about right after the above change is made. The Wm. Bowne tract of 30,000 acres joins the White & Dowthard, as on the plat "X Y." The Welsh tract of 105,000 is right on said plat, as near as I can tell without reference to my own plat and field-notes. What is called the Bridges tract of 30,000 acres in the question should be called the Bridger tract. I never run any of it; was never at the corners, and don't know anything about it. I believe the Messinberg tract of 12,500 as laid down on said map is laid down correctly, so far as I can tell. I could tell better if they had laid down the water-courses. The Banks tract of 58,500 acres
638 is somewhat mixed up. It is just as I got it first here on the map. I had to run it two or three times to get it right, and had to refer to Jackson's field-notes, and that set me right; but, as laid down on the map "X Y," it covers the ground. There should be four Fay & Curtis tracts instead of three, as stated in the question. There are two Fay & Curtis tracts of 25,000 each that join on the White & Dowthard survey. I can't say whether they are laid down correctly on the map "X Y" or not. As to the Homes, Gale, & Harness tract of 100,000 acres, I can't recognize said survey as laid down on the map "X Y" as altogether right. It is a hard matter to get it right, and, without my own plat and field-notes, I cannot tell what is right and what is not

right on said map. I believe the McCleery tract of
639 100,000 acres and the Homes, Gale, & Harness tract of 100,000 acres join, and I suppose the line from the birch down Gauley river is all right. I never ran the Sims & Lee tract of 200,000 acres and I don't know whether or not it is right on the map "X Y." The Joseph Patterson tract of 187,000 acres lies there somewheres. I don't know whether it is laid down right on the map "X Y" or not. I have two of the Walcott surveys down—one of 100,000 acres lying on the Kanawha river. I also have the 70,000-acre Walcott tract down. I reckon they are laid down right on the map "X Y," but I can't be certain. I know where one of the corners ought to be. If they had put the water-courses and all down I could tell better. I have my field-notes. I know about the Walcott
640 tracts of 100,000 acres and of 70,000 acres. I have run one of the lines or was along when it was run. I undertook to find the survey and tried one of the lines. It can be identified as long as I live. I can't say without my field-notes and map whether the various tracts hereinbefore named are laid down correctly on the map "X Y," with reference to each other, or not. I have my doubts about it. The map "X Y" does not give courses and distances, and without that I cannot tell whether it is right or not.

66th Q. Will you be kind enough to state whether or not you ever had any contract or agreement with Benjamin Rich, one of the defendants in this cause, by which you undertook to furnish or to show to him lands that were liable to sale by the sheriff of Webster county, Upshur county, and Randolph county for delinquent
641 taxes? If so, please state said agreement or undertaking and all you know about it.

The defendants except to the foregoing question as irrelevant and immaterial.

Ans. In the year 1871 Benjamin Rich and I went to Webster county. We and Peter Barb went up Gauley river, over the Henry Banks tract in question, across to Williams river. This was in June, 1871. At that time I agreed to identify such tracts as Rich wanted to buy at the sale. He said Rich gave his note to me for $2,000.00. Rich said that was what he became paymaster to me for for Albert Owen. I went and showed him the corners, and, in the year 1872, said Rich gave his note to me for $5,300.00. Said note bears date Nov. 4th, 1872.

67th Q. Was it after the sale of delinquent lands by the
642 sheriff of Webster county for 1869 that you and Peter Barb and Benjamin Rich were together at the time you speak of in your last answer?

Ans. We were up there in 1871, as I have already stated by me.

68th Q. Will you be kind enough to state what tracts you agreed to identify in 1871 that Benjamin Rich wanted to buy?

Ans. I agreed to identify any that he would buy, and no particular one was mentioned. That was my understanding.

69th Q. What was the consideration, if any, that he was to pay you for identifying any lands or such tracts as he might buy?

Excepted to because irrelevant.

Ans. It was understood between us that I was to have two cents an acre for such lands as he might buy and as I should identify. By agreement we closed up on the 4th of November, 1872, on that note of $5,300.

643 70th Q. Do you or not remember what tract or tracts you charged him with which was the consideration of the $2,000 note?

Ans. Owen and Rich came together and I don't know what contract they had between them. Owen and me differed and that was the amount Rich became paymaster for Owen to me for. I don't know anything about what tracts it was for. Owen was at my house a short time before the sale of delinquent lands for 1869, and he went away and afterwards came back and brought Rich with him. That is the first time I ever saw Rich or heard of him.

71st Q. Will you be kind enough to state whether or not you had ever had a contract or understanding with the said Albert Owen by which the said Owen had agreed to pay you a bonus on lands which you might identify for him and which he had bought or

644 might buy at sale *sale* for delinquent taxes.

Defendants except because irrelevant.

Ans. We had some understanding about it and we differed about some matters and I would not have anything more to do with him and Rich reconciled it up. Rich reconciled it by that note of $2,000 which he became paymaster to me for Owen for.

72d Q. State, if you please, whether your contract or understanding between you and Owen, of which you just spoke, was before or after the time Owen brought Rich to your house in 1869.

Ans. What took place between Owen and me was before Rich came. I don't recollect the time.

73d Q. State whether or not when Owen and Rich came to your house in 1869, as you have stated, Rich took Owen's contract with you off of Owen's hands and became responsible to you for his, Owen's, contract.

Defendants except to the following question because it is leading and because it is irrelevant.

645 Ans. It was long after that. There was nothing said only about going to see lands. It was in 1871 that the note was given. It was between the time they came to my house in 1869 and the time the note was given in 1871 that Owen and me differed.

74th Q. State whether or not you made any contract with Benjamin Rich in 1869 in relation to the purchase by him of delinquent lands or prior thereto.

Defendents except because irrelevant.

Ans. I recollect of nothing until in 1871 when he agreed to help Owen, and then we closed in 1872, Rich and me.

74½ Q. According to your computation, how many acres of land did Benjamin Rich buy at the delinquent tax sales for Randolph, Upshur, and Webster counties in the year 1869 and since that time?

The defendents except to the foregoing question because it is irrelevant and leading and illegal and secondary.

646 Ans. They can get it from the records of Randolph, Upshur, and Webster counties without taxing my memory. They can have reference to them.

75th Q. Did Benjamin Rich ever agree to pay you any sum of money for identifying lands for him that he had bought or might buy at tax sales lying in Upshur, Randolph, and Webster counties?

Defendents except because immaterial.

Ans. He agreed to may me by giving me that note.

76th Q. What note do you refer to?

Ans. The note you have got down there of $5,300 on the 4th of November, 1872.

77th Q. What tracts of land did you assist in identifying for which he became indebted to you for the amount of said note?

Ans. I showed corners to a good many tracts. I forget now how many.

78th Q. Please state as many of the tracts as you can.

647 & 648 Ans. The McCleery tract was one, the Messingberg was another. I forget whether I showed him the hickory at Fork lick or not. We rode around and I showed them to him. If I was at home I could tell better. That is all I can recollect now.

79th Q. Did you assist in identifying the Tidball tract of 100,000 — in this county?

Ans. I don't remember of being at any of its corners. I think I showed Benjamin the corner to the Sims & Lee tract of 200,000 — in Webster county. I run the 36,000-acre tract, known as the Banks survey, in Randolph county, or had it done. I think I showed the corners of the Joseph Patterson tract of 187,000 acres. What I did not show, Rich expects me to go as long as I can ride or have it done and show them yet. There is two Tidball tracts of 100,000 acres each. I showed him the corner of one of these tracts, but Rich did not get a deed for it.

And further this deponent saith not.

(Signed) J. B. SHREVE.

649 Nov. 21st, 1884.

Present: B. W. Byrne and Caleb Boggess.

GRANVILLE P. SHREVE, a witness of lawful age, being by me first duly sworn, deposes and says:

1st question by plaintiffs' counsel. State your age, occupation, and place of residence.

Ans. I am 39 years old; I am a railroad employee; I reside in Upshur county, West Virginia.

2d Q. Please state whether or not you ever did any surveying in Webster county; and, if so, for whom, and what lands.

Ans. I have done such surveying in said county. I did not do it in my own name, but in the name of and for my father, John B. Shreve. I do not remember the name of the survey. It was for Albert Owens. I surveyed on the Holmes, Gale, & Harness tract of land. In the Holmes, Gale, & Harness survey we commenced at Addison and ran some of the short lines coming north. I think that work was done for a man by the name of McClanahan. In the
650 surveying we did for Albert Owens we commenced on Gauley river at the mouth of a creek, said to be Turkey creek by some of the settlers; we ran south, I think, up Turkey creek. I am not sure how much we did run there, but, I think, some two or three days. I think this was all we did for Owens. I do not remember on what survey it was. We did some surveying for McClanahan at Hacher's lick. I think it was on two 25,000-acre surveys, making 50,000 acres. I don't remember the name of the surveys. At one time we commenced a survey on Laurel creek at a sugar corner for McClanahan, and ran out through the glades. I do not know what tracts we were running at that time. I was hired by the day by my father and did not charge my memory with what surveys we were on. We surveyed in there by a man by the
651 name of Du Bois—Charley Du Bois. I don't know the name of the survey. It was not a large survey, I don't think. I forget whether we did any surveying for Dr. Cherry or not. I don't remember just at the present time of our doing any other. I don't recollect. They were out there a few times when I was not with them.

3d Q. Please state when this surveying was done, as near as you can.

Ans. I think some of it was done in 1868 and some in 1869, as near as I can recollect. I won't be positive as to the time. I think maybe some of it was done before that time.

4th Q. State, if you know, what McClanahan's given name was.

Ans. William, I believe.

5th Q. State where he lived and whether or not he claimed any land in Webster county.

Ans. In Centre county, Pennsylvania, I guess he lived. He claimed to us that he had bought out some heirs to some lands, to the best of my recollection.

652 6th Q. Do you recollect what survey he claimed?

Ans. I do not. I don't recollect whether it was on the Homes, Gale & Harness survey or some other survey.

Cross-examined by CALEB BOGGESS, counsel for defendants:

1st Q. State when you first made the acquaintance of Benjamin Rich, one of the defendants in this case.

Ans. I think it was in September, 1869, in this town.

2d Q. Had you any knowledge of him from any source before that time?

Ans. No; not before that time.

3d Q. Were you in any way directly or indirectly interested in or connected with entering or causing to be entered on the assessor's books for Webster county in the years 1867 or 1868 any lands in said county?

Ans. I was not.

4th Q. Had you any agency in the entry on said books in said county of a tract of 100,000 acres in the name of William
653 McCleery or a tract of 58,500 acres in the name of Henry Banks?

Ans. I had not.

5th Q. Were you at any time associated with the defendant Benjamin Rich or any one else for the purpose of entering or causing to be entered on the assessor's books of said county for taxation for either of the years aforesaid the entry of any tract of land?

Ans. I was not.

6th Q. Had you at any time any connection with or in any way were you associated with said Benjamin Rich in the purchase or ownership of the McCleery tract of 100,000 acres?

Ans. I was not.

7th Q. State when and where you became first interested with the said Rich in the purchase of any lands in Webster county, and to what extent.

Ans. It was at Addison, in Webster county. It was on the day of the sale of the 58,500-acre tract, sold in the name of Henry
654 Banks for delinquent taxes in the year 1869. I became a one-third owner with said Rich and Albert Owens in said 58,500-acre tract.

8th Q. How long before the sale of the Banks & McCleery land for taxes in 1869 that you first saw or knew of Benjamin Rich?

Ans. It was a few days—4 or 5 days, about.

And further this deponent saith not.

G. P. SHREVE.

Continued until Nov. 22d, 1884.

G. M. F.

9½ A. M., Nov. 22D, 1884.

Present: B. W. Byrne, counsel for plaintiffs.

MARTIN E. SHREVE, duly sworn, deposes and says:

1st Q. State, if you please, your age, occupation, and place of residence.

Ans. I am 54 years old in December (1884); by occupation I am a farmer; I am also a surveyor of lands, notary public for Upshur county, West Virginia, &c.; I reside in Upshur county, and
655 have resided here all my life with the exception of about two years some 30 years ago.

BENJAMIN RICH, one of the defendants, appeared in person:

2d Q. Will you be kind enough to state whether or not you ever did any surveying in Webster county; and, if so, what tracts did you survey?

Ans. I have done surveying in Webster county under the direction of my father, John B. Shreve. I run and helped to run some few lines from the hickory which stands at or near Fork lick, which is in the town of Addison, in said county. It seems to me, from what the papers show, that said hickory is a noted corner for several tracts—that is, it is a corner from which to run to find several corners. I think we run one line from there to get a start
656 to the Henry Banks survey of 58,500 acres to run a couple of lots. It seems that the original Henry Banks tract contained 58,500 acres. It was subdivided into smaller tracts before the time that we surveyed it, as I understood from my father. He was along on all the running we did on the Banks survey and took his own field-notes, with the exception of one small line. I and my brother, G. P. Shreve, ran the McCleery line from near Gauley river, at the birch corner, running down Gauley, crossing Gauley five times, leaving Gauley, crossing Williams river, crossing Cranberry river; then, crossing over the hill facing Cherry river, the distance gave out. My father was along on this line part of the time. My brother, G. P. Shreve, and I did the running between us. I can't say just what parts of the line I did run myself. On two of the surveys of the White & Dowthard
657 of 50,000 acres each we ran from where the distance on the McCleery line gave out across the southwest end of the two tracts. We crossed branches of what they told us was Cherry river. From where that distance gave out we ran part of the line between the White & Dowthard tract and the Bowen survey of 30,000 acres, across branches of Cranberry to a branch of Williams river, and stopped running at that point.

We did other surveying both before and after that, of which I have spoken, under specific directions of my father, but have no means at present of saying what it was or on what lines.

Continued until Nov. 24th, 1884.

1¼ P. M., NOV. 24TH, 1884.

Present: B. W. Byrne, counsel for plaintiffs, and Benjamin Rich, defendant, in person.

Deposition of the witness, M. E. SHREVE, resumed:

658 3d Q. Will you please continue the answer to the last question asked you above?

Ans. We run the David Linn tract of 35,000 acres. My father took down the distance and field-notes and kept them himself. We ran all around the David Linn survey. We also run a few lines for Albert Owens on the Welsh survey. I don't know the amount of the survey or what Welsh's given name was. I don't know that I could tell on what waters we were running when we run the Welsh. I don't think I could tell on which side of Elk river we were. I am not able to find my field-notes, high nor low, and without them I can't locate the survey. I was along and helped do some running down on Elk river about the Union mills. Father did the most of that running himself, but I was along. A man by the name of Du Bois was along superintending the work.

659 4th Q. Will you state who Du Bois was, what his given name was, and where he was from.

Ans. I can't state where he was from or his given name. I only know him as Du Bois. He was along, and sometimes he gave orders and sometimes father did.

5th Q. You may proceed to state what further surveying you did in Webster county.

Ans. I suppose I have been with father on other different points, but I can't call them to memory.

6th Q. Please state in what county you did the running which you say you did near Union Mills.

Ans. I would not just like to say, but my understanding is Union Mills was not in Webster county but was just below the line.

7th Q. Please state what tracts you were running near Union Mills.

Ans. I can't say what tracts we were running.

660 CALEB BOGGESS, counsel for defendants, appeared:

8th Q. Will you please state when you did the running of which you testified.

Ans. The running we did on the White & Douthard surveys of 50,000 acres each was for a man by the — McClanahan—at least he was with us and was superintending the work. This surveying was done in 1868. The surveying we did for Du Bois, or under his superintendence and with him along, was in the year 1866. I can't give the dates of any other surveying I did or helped to do in Webster county.

And further this deponent saith not.

M. E. SHREVE.

The foregoing depositions of G. P. Shreve and M. E. Shreve were taken at intervals on the days named, during the pendency of the taking of the deposition of John B. Shreve and pursuant to notices of adjournment made in said last-named deposition.

G. M. FLEMING,
Notary Public.

661 BENJAMIN RICH, a witness of lawful age, being by me first duly sworn, deposes and says:

By WM. C. CARPER, counsel for plaintiffs:

1st question. Are you one of the defendants in this suit?

Ans. Yes, sir.

2d Q. Look upon the paper-writing herewith filed as part of your deposition in this cause, consisting of three sheets together, marked Exhibit "Y Z," and state if said paper-writing contains a correct copy of your deposition in the chancery suit of John B. Shreve against you, pending in the circuit court of Upshur county.

Ans. I have compared this paper-writing marked "Y Z" as aforesaid with the original deposition made by me in said cause and believe the same to be a correct copy.

3d Q. State whether you made any contract with John B. Shreve about assisting you in identifying lands in Webster county.

662 Ans. I did make a bargain with John B. Shreve to assist in identifying and surveying lands in Webster county; also in Upshur & Randolph counties.

4th Q. When did you make said bargain or contract with said Shreve?

Ans. I think it was in June, 1871. I was here and in Webster county in that month, looking after the lands I had bought and become interested in in Webster county in 1869 and obtained deeds for in 1870. When at Webster court-house I was shown a list of lands returned delinquent & to be sold the coming fall. Shreve recommended several of the tracts. I think it was at that time that I made the bargain with John B. Shreve to identify and survey such tracts as I might think best to buy & obtain deeds for.

5th Q. When did you first become acquainted with John B. Shreve?

Ans. Five or six days before the sale of delinquent lands for Webster county, on the 24th of September, in 1869.

663 6th Q. Was there a contract between Owens and Shreve as to what Shreve was to have for identifying and surveying lands for Owens in Webster county?

Ans. I understood from Owens that he had a contract with John B. Shreve, but I never knew definitely what it was until within the last three or four years.

7th Q. When did you first learn of Owens that there was such a contract?

Ans. I can't tell that. Since the institution of this suit of John B. Shreve against me, which was in the month of December, 1878, I got into conversation with Owens & he told me then that he had

a written contract with John B. Shreve in 1869, but I don't think he told me what that contract was, and since the institution of this suit in which I am now testifying I had another conversation with Owens, and he then told me that I bought the McCleery tract
664 under his agreement with Shreve, and that I took it to assist him.

8th Q. Did you buy the McCleery tract in Webster county; and, if so, when?

Ans. I did. I bought it on the 24th of September, 1869.

9th Q. Did you have any arrangement or agreement with any person concerning the purchase of said tract of land?

Ans. I had an understanding or agreement with Albert Owens that if he would let me buy in my own name the McCleery tract I would advance to him some money for him to buy other tracts, and I would become responsible to and would pay John B. Shreve for surveying and identifying that tract, which amount was to be $2,000.00.

10th Q. When was that arrangement made with Albert Owens?

Ans. On the evening before or on the morning of the sale, on the 24th of September, 1869, at Webster court-house.

11th Q. Do you recollect whether at the sale for taxes, on the 24th of September, 1869, in Webster county, you met Dr. Cherry
665 from Baltimore; and, if so, whether he bought any land; and, if any, what land?

Ans. I met Dr. Cherry at Webster court-house at the time of said sale. He bid on and bought some lands—several small tracts, and I think one or two large ones. I don't think I can name any of them now. The Homes, Gale & Harness tract was put up and Dr. Cherry and a man by the name of McClanahan bid on it and bid it down to, I think, about 9,000 or 10,000 acres. I don't know which one of them bid it in. There were hot words passed between them is what makes me remember it.

12th Q. Do you recollect whether or not there was an arrangement between Albert Owens, Dr. Cherry, and yourself as to what tracts each one of you should buy?

Ans. I had no arrangements with Cherry and none with anybody else, except the one between myself and Albert Owens, as to the McCleery tract spoken of above.

666 13th Q. Did that arrangement between you and Owens as to the McCleery tract include an arrangement as to the tracts that Owens was to buy—that is, that Owens was not to bid against you or you against Owens?

Ans. I don't know that the arrangement between Owens and me was such as to prevent me from bidding on anything I wanted to, but I was not inclined to bid on any other tracts than the McCleery, having no information as to them and not having looked at them. The arrangement and understanding was that Owens was not to bid against me on the McCleery tract.

14th Q. How many tracts of land did you buy at the delinquent sales by the sheriff under your arrangement or contract with John

B. Shreve to pay him two cents an acre, and what tracts, and what is the amount of each?

Ans. The bargain between me and John B. Shreve only
667–669 applied to such lands as I should buy and obtain deeds for and that he could identify and that I thought would be worth paying taxes on. I bought and settled with him for a tract of 200,000 acres, known as the Sims and Lee tract; also a tract of 30,000 acres, known as the Bowne tract; also a tract of 30,000 acres, known as the Bridger tract; also a tract of 5,000 acres, known as the Reeder tract; also a tract of 10,000 acres, known as the Reed tract, in Webster county; in Upshur county a tract of 100,000 acres, known as the Joseph Tidball tract (another survey); in Randolph county a tract of 100,000 acres, known as the Robert E. Randall (trustee) tract, and 15 small tracts, amounting to 66,000 acres, in the name of Robert E. Randall, trustee.

Continued until November 26th, 1884.

G. M. F.

10 A. M., NOVEMBER 26TH, 1884.

Present: B. W. Byrne and Wm. C. Carper, counsel for plaintiffs, and Caleb Boggess, counsel for defendants.

670 Examination of the witness, BENJAMIN RICH, resumed:

The witness desires to correct his deposition given on the 25th of Nov., 1884, as follows:

In answer to question "14," the bargain with John B. Shreve was that I had asked him, with reference to some of these tracts of land in Webster county, what he would charge me per acre on certain tracts to survey, show original lines and corners sufficient to identify them, if I should purchase any of them at the approaching sale. He offered to do so at different prices—some at one cent, some at two cents an acre.

And further this deponent saith not.

BENJAMIN RICH.

STATE OF WEST VIRGINIA, *Upshur County,* } *To wit:*

I, G. M. Fleming, a notary public in and for the county and the State aforesaid, do hereby certify that the foregoing deposi-
671 tions of John B. Shreve, Granville P. Shreve, Martin E. Shreve, and Benjamin Rich were duly taken, sworn to, and subscribed before me by said deponents at the times and place and for the purpose therein mentioned; and I do further certify that I am not an attorney for any of the parties to said cause and am not interested in the same, and that said witnesses were first duly cautioned and sworn according to law.

Given under my hand this 26th day of November, in the year 1884.

G. M. FLEMING,
Notary Public.

Exhibit "Y Z," filed with the deposition of Benjamin Rich, is in the words and figures following, to wit:

JOHN B. SHREVE
vs.
BENJAMIN RICH, Defendant. } In Chancery.

Testimony of witnesses produced, sworn, and examined before me, a notary public for Pennsylvania, duly commissioned and qualified and residing at Bellefonte, county of Centre, in said State of Pennsylvania, taken at the office of A. O. Furst, Esq., in said borough of Bellefonte, beginning on this 23rd day of September, A. D. 1881, at 2 o'clock p. m., on the part of the defendant in the above-entitled cause.

WILBUR F. REEDER,
Notary Public.

BENJAMIN RICH affirmed:

I am the defendant in the above-stated suit and reside at Unionville, Centre county and State of Pennsylvania. I first met John B. Shreve, the plaintiff in the above-stated cause, on September —, 1869, at Buckhannon, W. Va. Albert Owen, of Phillipsburg,
672 Penna., introduced me to him. Owen had met Shreve some months before, and, as they both said, had been examining and surveying lands to be sold that fall for taxes. Shreves represented to me that he knew the beginning corners and lines of several large tracts of land that were to be sold in Webster county, West Virginia, that month; that he had the original plats and field-notes of Edward Jackson, the surveyor who made these surveys; that these corners and lines had been shown to him by Henry Jackson, he said, second surveyor of Randolph county, who was along with Edward Jackson when they were made. Shreves said that Henry Jackson was the second surveyor of Randolph county, and that he, Shreves, was deputy surveyor under him, and that he had nearly all of Henry Jackson's field-notes, and that he was the only man living that could show these corners and lines to identify these surveys. He also said that he had had the titles to these several tracts examined by one of the best land lawyers in the State (did not give his name); that he would show these corners and lines of these lands to the county surveyor sufficient to identify any of these tracts and assist him or them in getting deeds and surveying the tracts of land if the party buying them would agree to pay him two (2) cents per acre bonus. Owens had called my attention to these land sales some months before this and showed me a letter from John B. Shreve about the same as I have stated above. This letter and Owens' statement as to the lands, quality and quantity of timber, coal, &c., induced me to go to West Virginia at the time I did. On my way out, at Carksburg, upon inquiry of Mr. Walker, a good land lawyer, he recommended Judge Lee. I consulted Judge Lee, and, after giving me a long account of the law under the new constitution, — said the most important thing was to identify these lands. If that was done the title would hold all the land in the survey that

the taxes were not actually paid on for that year by the proper owners. Then Shreves being so positive about his ability and
673 willingness to identify these lands, I agreed to buy one tract, known as "Col. Wm. McClary," 100,000 acres; to pay 2.000 dollars when I got the deed; corners and lines sufficient to identify it shown to me or county surveyor. I agreed to pay this two thousand ($2,000) dollars to John B. Shreves as a bonus for his information and services, as stated above. Owen, in my presence, agreed to take one tract of 105,000 acres, known as "James Welch;" one of 187,000 acres, "Joseph Patterson," and some others. Shreves went with us to attend the sale. I bought the above tract, "Col. Wm. McClary;" Owens bought several. In August, 1870, John B. Shreves came to my house, in Unionville, Pennsylvania, and got me to take him to Phillipsburg, Pennsylvania, to see Mr. Owen. He said Owen was not paying him as he agreed. After a long talk between them Mr. Shreves agreed if I would take the "Welch tract of 105,000 acres" he would wait on me for the bonus, $2,100.00, until I could sell the land. I agreed to do that, and Owens assigned the sheriff's memorandum of the said tract to me at that time. I got the deed for the two tracts about the 1st of October, 1870. Mr. Shreves showed to B. Mollohan, county surveyor, and myself the beginning corner of the McClary tract and promised to show Mollohan the corner of the Welch tract, which he represented he had surveyed a part of. When we got back to Buckhannon I settled with Shreeve, having paid him several hundred dollars in merchandise, a buggy, and cash, which left me in his debt on the two tracts, "McClary" and "Welch," twenty-seven hundred ($2,700) dollars, for which I gave him my due bill, having paid him up to that time fourteen hundred ($1,400) dollars. In June, 1871, Mr. Shreeve came to my house. We settled on the 8th day of June, he having been paid several small amounts in cash, bill of groceries from T. Conrow, Philadelphia, and cash at the time. I then owed him two thousand ($2,000) dollars as a balance of bonus on the said two tracts, viz., "Col. Wm.
674 McClary" and "James Welch" tracts, for which I gave him my note dated June 8th, 1871, which note he then agreed to hold until the land was sold, claiming he should have something to show what I was to pay him, as I had got my deeds. At the sale in Webster county, West Virginia, in 1871, I bought the following tracts, viz: "Sims & Lee," 200,000 acres; "Bowen," 30,000 acres; "Bridger," 30,000; "Reed and Reeder," 15,000 acres. In Upshur county I bought at tax sale a tract of 100,000 acres, "Joseph Titball," and 20,000 acres in same name. In Randolph county I bought at tax sale a tract of 100,000 acres, name of "Robert E. Randall," and fifteen small tracts, amounting to 66,000 acres, in same name. These were all bought on the recommendation of John B. Shreeve, he to show the corners and lines to identify, also to help survey said tracts, and he to charge me nothing for his time, but to have a bonus on each tract when sold. After getting the deeds in the different counties in 1872 he again insisted on having something to show what was to be paid him, I having paid him up to that time several hundred dollars. I set-

tled with him for the bonus agreed on for the several tracts on November 4th, 1872, and instead of giving him an agreement showing our bargain in full I relied upon his promise to wait until the land was sold. I gave him my note, payable to himself, dated November 4th, 1872, for five thousand and three hundred ($5,300) dollars or near that amount, being the balance due him as bonus on the several tracts. If the words "with interest" are in the note it was not so intended, as Mr. Shreeve always agreed to wait for his money until the land was sold. In 1875 I had to buy the "James Welch" tract of 105,000 acres over again, in name of "Francis Highland," at a cost of about six hundred ($600) dollars, for two years' taxes; also the "Titball" — of 100,000 acres I had to buy in Randolph county, having been patented to John Davis for $443.00. These two amounts, making ten hundred and forty-three ($1,043) dollars,
675 Mr. Shreeve agreed to deduct from his note when we settled, as it was his fault, having put them on the books in the wrong name. I claim a reduction of twenty-one hundred ($2,100) dollars because John B. Shreve has never shown to B. Mollohan, county surveyor of Webster county, or to me, any of the corners or lines to the "James Welch" survey of 105,000 —, but has refused to go with Stewart Wood, one of the present owners, to show the lines and corners belonging to said tract, which twenty-one hundred ($2,100) — was included in our settlement June 8th, 1871, when the note for two thousand ($2,000) dollars was given. I claim a reduction of one thousand ($1,000) dollars for bonus on the "Joseph Titball" tract, because John B. Shreeve has never shown to me, or to any one for me, any corner or line on the said tract, which said one thousand ($1,000) dollars was included in our settlement November 4th, 1872, and included in the note given that date for five thousand and three hundred ($5,300) dollars, or near that amount. I claim a reduction of thirteen hundred ($1,300) dollars because John B. Shreeve has never shown to me, or to any one for me, any of the corners or lines to the following tracts: "Bowen," 30,000 acres; "Titball," 20,000 acres; "Reed," 10,000 acres; "Reeder," 5,000 acres, amounting to 65,000 acres, on which a bonus of two (2) cents per acre, amounting to thirteen hundred ($1,300) dollars, was settled for and included in the note given November the 4th, 1872, for $5,300, or near that amount. In 1873 John B. Shreve agreed with Charles B. Shreeve, his son, in my presence, and after obtaining my consent, to transfer to him two thousand ($2,000) dollars of these notes, with the express understanding that this money was not to be paid until the lands were sold, which said claim of Charles B. Shreves has since been settled and paid, and for which said two thousand ($2,000) dollars I claim a credit on the claim of John B. Shreve. I claim the following payments on said claim, viz:

676	1872, 16 Dec.	Check marked "A," W. F. R., N. P....	$500 00
	" 31 "	" "B," W. F. R., N. P....	200 00
	1873, 28 July.	Check marked "C," W. F. R., N. P.....	95 00
	" 20 Aug.	" "D," W. F. R., N. P.....	205 00
	1874, 2 Feb.	" "E," W. F. R., N. P.....	50 00

1874,	10 Sept.	Cash credited on note	$150 00
"	12 "	Note at 30 days, marked " F," W. F. R., N. P.	100 00
"	19 "	Cash credited on note	50 00
"	19 "	Note at 60 days, marked " G," W. F. R., N. P.	100 00
"	21 Dec.	Check at 30 days, marked " H," W. F. R., N. P.	75 00
1875,	26 Feb.	Check marked " I," W. F. R., N. P.	300 00
"	1 Mar.	Check at 30 days, marked " J," W. F. R., N. P.	200 00
"	12 July.	Note at 30 days, marked " K," W. F. R., N. P.	200 00
'78,	25 May.	Draft at 90 days, marked " L," W. F. R., N. P.	126 00
'76,	17 Feb.	Draft at 3 months, marked " M," W. F. R., N. P.	100 00
'77,	25 June.	Note at 4 months, marked " N," W. F. R., N. P.	260 00
'76,	20 May.	Cash credited on note	100 00

NOTE.—The checks, notes, and drafts marked and designated as above set forth offered in evidence.

Ques. Mr. Rich, how was the draft for $126.00, dated 25th May, 1878, and identified as " L," W. F. R., N. P., paid?

Ans. The draft was placed in the hands of Mess. Beaver and Gephart for collection, upon which they obtained a judgment against me in the court of common pleas of Centre county, to No. 140, Aug. *F.*, 1879. This judgment was in favor of Charles E. Mylius, the endorsee on the draft. I paid the amount of the judgment, interest, and costs to Mess. Beaver and Gephart, his attorneys, as per their receipt dated Aug. 18th, 1879.

Receipt offered in evidence and marked " O," W. F. R., N. P.

(Signed) BENJAMIN RICH.

677 And now, Sept. 23rd, 1881, adjourned until Saturday, Sept. 24th, 1881, at 8½ o'clock a. m.

WILBER F. REEDER,
Notary Public.

GEORGE W. JACKSON sworn:

I live in Bellefonte, Penna., and my business is banking; am a member of the firm of Wm. F. Reynolds & Co., bankers.

From an examination of our books I find that on March 17th, 1873, Benjamin Rich is charged with check in favor of John B. Shreve for seventy-five ($75) dollars. The check was returned to Mr. Rich when his book was balanced.

(Signed) GEO. W. JACKSON.

WILBER F. REEDER,
Notary Public.

BENJAMIN RICH recalled in chief:

I have made diligent search among my papers, checks, and notes for the check in favor of John B. Shreve, which Mr. Jackson says was charged to me on the 17th day of March, 1873, for seventy-five ($75) dollars, but I have been unable to find it. This check was given by me to John B. Shreve as a payment on account of my notes held by him, and for which credit has not been allowed by him on said notes. Under my contract with John B. Shreve I was not to pay the said notes until the tracts of land mentioned in my testimony before were sold, and under said contract I have not been, nor am I now, legally liable to pay said notes, because the said tracts of land have not been sold, except a portion of several of them to raise money to pay taxes. I have made these payments for which I claim credit on my notes, not because they were due, but because he claimed that he was poor and needed assistance. He was continually appealing to me for money and said that he would make a big reduction at our final settlement if I would advance him money.

(Signed) BENJAMIN RICH.

WILBER F. REEDER,
Notary Public.

678 I hereby certify that the above witnesses were duly qualified and examined at the time and place stated in the above caption, and that they subscribed their depositions in my presence.

[NOTARIAL SEAL.] In witness whereof I have hereunto set my hand and official seal, at Bellefonte, Centre county, Pennsylvania, this 24th day of September, A. D. 1881.

WILBER F. REEDER,
Notary Public.

STATE OF WEST VIRGINIA, }
County of Upshur, } *ss:*

I, John A. Hess, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing is a true copy from the original filed in my office, in the chancery cause of John B. Shreve *vs.* Benjamin Rich.

[SEAL.] In testimony whereof I hereunto set my hand and affix my official seal this the 17th day of January, 1885.

JOHN A. HESS, *Clerk.*

And on another day, to wit, on the 12th day of February, 1885, the following depositions were filed in the clerk's office of said court:

Depositions of witnesses produced, qualified, and examined before me this 25th day of April, A. D. 1884, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the office of E. and E. M. Blanchard, in the borough of Bellefonte, county of Centre and State of Pennsylvania, by virtue of the annexed notice to take depositions, hereto attached, for the examination of witnesses in a certain cause depending in the circuit court of the United
679 States in and for the district of West Virginia, sitting at Clarksburg, in said district, wherein Tamlin Braxton *et al.* are plaintiffs and Benjamin Rich *et al.* are defendants.

James H. Ferguson appears for plaintiffs.

Benjamin Rich, one of the defendants, also appears, with his attorney, A. O. Furst, Esq.

ALBERT OWENS, being produced, sworn, and examined on the part of plaintiffs, deposeth as follows:

I am nearly sixty years of age; I live near Bellefonte; occupation, a gentleman of leisure; buy and sell real estate sometimes. I know Benjamin Rich, and did know Thornton Conrow in his lifetime; spoke to him but once. I know Jno. B. Shreve, of Upshur Co., West Va., and Granville P. Shreve, his son. I attended the sale of lands in Webster Co., West Va., for taxes on September 24th, 1869.

Question. If you know anything in regard to the entry on the land books of Webster Co., West Va., for taxation, of the lands sold on the occasion when you were present, please state all you know in relation to the matter, either from your own knowledge or by conversations with Mr. Rich or any of the other defendants or by conversations with Jno. B. Shreve or G. P. Shreve.

A. O. Furst, Esq., appears for B. Rich, one of the defendants, and his codefendants and objects to the question in its form and shape, because the witness was not present in West Va. prior to the 24th of Sept., 1869, and could know nothing of the assessment of the land for 1868.

2nd. That no conversations (if any were had) with other parties except defendants is competent evidence.

3rd. That the suit in which this rule is taken alleges that the witness fraudulently combined with Mr. Rich and others to defraud plaintiffs out of their lands, which is not true, and concerning which plaintiffs' counsel have no legal right to interrogate the witness.

680 Answer. On or about the 1st of May, 1869, I went to West Va. and met Jno. B. Shreve at his residence in Upshur Co. I went there, having heard from various sources that large quantities of land were to be sold for delinquent taxes in several counties of the State of West Va. On meeting Jno. B. Shreve I was shown a large folio book of land surveys dating back from 1780 to 1795, as near as I can recollect. These plots purported to be the surveys of Edward Jackson and his assistants or deputies, and from their antiquated appearance seemed to be original. I was assured by Mr. Shreve that he had known Jackson, the deputy land surveyor,

and that he, Shreve, was himself a land surveyor, and that he had been shown by Jackson and his successors the old original corners and landmarks of a large amount of the surveys to which these papers referred. Mr. Shreve further instructed me that there was to be a sale of many of these lands for delinquent taxes in the following autumn. I arranged with Mr. Shreve that he should assist me in becoming familiar with these surveys prior to the coming sale—to survey and identify the lands that I might purchase at the coming sale—for which services so rendered I was to pay Jno. B. Shreve the sum of two thousand ($2,000) dollars for each one hundred thousand acres properly surveyed and identified by him and purchased by me; the money to be paid when such service had been rendered. At that time I met Jno. B. Shreve as a stranger, and I had not an acquaintance in the State of West Virginia. I went to West Va. voluntarily and alone, having in casual conversations heard of a prospective sale of lands for taxes. I went there without any definite purpose at the beginning. I subsequently heard that the sale of lands for Webster Co. was fixed for the 24th day of September, 1869. Having made this arrangement with Jno. B. Shreve, I came home and proposed to some of my friends that if they would find the expense money I would attend the sale, make such purchases as seemed advisable, and divide profits with them. I had
681 no money, save a few dollars, less than a hundred, and could not have carried out the project without such assistance. During the summer I met Doctor Blair, Thomas Garey, a Mr. Alexander, and Benjamin Rich at Unionville, in this county, and was introduced to them by William C. Garey, an acquaintance of mine, the first four gentlemen being entire strangers. I arranged with Alexander Garey, Alexander, Dr. Blair, and Rich that they should furnish me with one thousand dollars and in consideration thereof I should attend the sale either with or without any of them and invest the money on my best judgment and deliver to them one-half the proceeds or lands that should be purchased with the money furnished by them. I lived twenty miles from them and did not often see any of them, but in the early part of Sept. I received a notice from Mr. Alexander that they had consulted together and would withdraw from the arrangement, as it was too indefinite and uncertain. I think about the 20th of September I went to Unionville to see these parties and see if they would carry out the arrangement that had been made. Each one would refer me to another, and they declined to furnish the money or to go with me except Benjamin Rich, who said if he could get ready and could raise some money, which he thought he could do, he would go with me and see what there was in the project. I then said to Rich, "If you will make an effort, raise the money, go with me, and carry out your part of the contract, I will leave it optional with you after the sale to withdraw. I will refund your money and pay your expenses on the trip." Rich said he would make the effort, but the time was short, but he thought he would go. Our time was limited in which to make the trip, but Rich met me at the train, and we proceeded to West Va. and to Webster court-house. We arrived there one or two

days prior to the sale. Rich was present. Jno. B. Shreve was present. Granville P. Shreve was present. Land agaents and lawyers from many of the surrounding counties were present. The sale was
682 had and was somewhat animated. I purchased a long list of tracts of land, large and small, bidding at random, a list of which purchases, certified, I still have in my possession and herewith produced. (A copy thereof, by request, is made by the notary and filed with this deposition.) The amount paid by me, as receipted in this list, is one hundred and fifty-four dollars and fifty-four cents ($154.54). Benjamin Rich and myself returned home together, and on our way, between Buchanan and Clarksburg, I asked Rich which option he would take, his interest in the land or his money and expenses refunded. He said he would take his interest in the land. I then said to Rich, "If you are not satisfied I will refund your money, pay your expenses, and give you ten dollars per day for the time you have lost." Rich replied, "If you will give me two thousand dollars I will step out." That was understood to end the option, as it really did, and it was settled that he was to take his interest in the land.

Question. Did Mr. Rich buy any land sold for taxes on that or any other day while you were there himself?

(A. O. Furst, Esq., objects because the record is the best evidence.)

Answer. I am not positive. I think there was some bidding by either Rich or Shreve. I remember I was a little jealous, because Shreve had agreed to serve me and my interest alone. I thought that Shreve and Rich rather violated the contract I had with Shreve, but my attention, I remember, was intensely occupied with the land agents and lawyers who were bidding in competition.

Question. Do you remember seeing James Gilliland at Webster court-house on that occasion?

Answer. I saw a tall gentleman, a stranger to me, who was pointed out as a Mr. Gilliland from Centre Co., Pa., with others from Centre Co., Pa. I was not introduced to Gilliland and do not re-
683 member that I ever saw him before or have seen him since.

Question. Do you remember of any conversation by Mr. Gilliland with you or with Mr. Rich, in your presence, in regard to the title to the land to be sold for taxes?

Answer. No conversations occurred in the presence of Mr. Gilliland, for I did not meet him face to face.

Question. Did you or Mr. Rich, in your presence, consult any attorney present, and especially Homer A. Holt, then a practicing attorney, in regard to the title that could be acquired under a purchase made at the tax sale then about to take place?

Answer. I do not recollect that either of us did. I remember of meeting Homer A. Holt and of having several conversations with him, both prior to and after the sale. He certainly was not employed as counsel, but we found him affable and accessible.

Question. If Judge Holt told you anything about the title to be

acquired at the sale of the lands about to be made for taxes state what he said.

Objected to as incompetent.

Answer. I have no definite recollection further than this, that Judge Holt's opinions that there would be some good and some poor titles acquired. I further remember that he spoke quite favorable of my purchase of a tract of land containing about 8,000 acres, and sold in the name of James Camp's heirs, and he said he could fix me up a pretty good chain of title.

I don't remember whether Mr. Rich was present at the conversation with Judge Holt or not.

Question. Did John B. Shreve or G. P. Shreve either say anything to you about an arrangement between Mr. Brockerhoff, Huling, and others, of Penna., in regard to these same lands or any of them; and, if so, what did he say?

684 Objected to as irrelevant, not affecting Mr. Rich or any of the defendants, they not being present.

Answer. Yes; in several conversations with Jno. B. Shreve he referred to an arrangement he had with some Centre county and Lock Haven men in reference to a similar service which he had engaged to render to me. He named several gentlemen, of whom Mr. Gilliland was one; Dan'l Welch was one; a young man by the name of McClenahan; I think a Mr. Huling was named; and it was represented that there were twelve in the combination. They were all strangers to me, with the exception of E. Blanchard, with whom I may have had a speaking acquaintance. I am not certain Blanchard was in the combination. Shreve said that old Gilliland had gone back of his word and wouldn't come up to his contract and pay him for his services and he would do nothing for him. This was said on the morning of the sale or on the day previous. My recollection is that Gilliland was not at the sale, but left the night before.

Question. Did you see the advertisement of the list of lands to be sold for taxes posted up or in the hands of the sheriff or anywhere else? If so, state.

Answer. I saw an advertisement of the sale on the front door of the court-house. I saw a list of the lands to be sold in the recorder's office. I saw the same list in the hands of the sheriff and afterwards in the hands of his deputy.

Question. Did you see anything written in pencil on the list of sales opposite any one or more of the tracts therein named; and, if so, what?

Objected to that the evidence is incompetent; that the writing would be the best evidence if any such exists.

Answer. I saw opposite some tracts of land, as my eye glanced over it, the word "redeemed" written. I think, probably, in
685 some instances, I saw the phrase "taxes paid" or something equivalent to that.

Question. State, if you can, what tracts those words were written opposite to.

Answer. I cannot state any tracts. I remember the real-estate men and lawyers who had collected there, and formerly referred to in my testimony, in possession of this list in the recorder's office, and they claimed to be paying taxes and redeeming lands either for themselves or as agents. I know Homer A. Holt was one of them.

Question. Were not the words "redeemed" or "taxes paid," one or the other, written opposite the "William McCleary" tract of 100,000 acres?

Answer. Not to my knowledge.

Question. Was not the Wm. McClear*ly* tract of 100,000 acres one of the tracts which Judge Holt told you that the title would be bad or doubtful?

Objected to as immaterial and irrelevant.

Answer. I have no recollection of receiving any such information from Judge Holt or any one else. It don't seem to me he gave such information; possibly he did.

Question. Do you remember anything of a "Henry Banks" survey of 50,000 acres or upwards being sold at that sale?

Answer. The name seems familiar to my mind, but I have no recollection in reference to it.

Question. Do you remember whether or not you bid in the Wm. McClear*ly* tract of 100,000 acres? And, if you did, state why the purchase price was erased from the list, a copy of which is filed with your deposition, and state why the residue of the erasures in said list were made.

Answer. I cannot answer. I do not fully understand the meaning of these erasures. I have not opened this paper for many years until I came here to give testimony. At first I had a theory in my mind with reference to these erasures, but on closer observa-
686 tion that theory does not seem to be valid. I find in my list two tracts in the names of "Say" and "Curtis" erased, and I find I have deeds and plats of those two tracts of land. There was a tacit understanding between me and Rich and me and Shreve that I was to do all the bidding, but I think and believe there was a breach of that understanding some time during the day. I am of the opinion that Shreve did some bidding. I think Mr. Rich came to me some time in the day and said he wished to carry something home in his own name. I think I granted the request, but a little reluctantly in my own mind. Who bid in the McClear*ly* tract I am not able to say. I have no distinct recollection of Rich bidding in any tract in his own name. I have no clear recollection of the status of the McClear*ly* tract. At the sale we had an undivided interest. Subsequently we made a division, and I assigned my interest to Rich in portions. What tracts I assigned I am unable to answer. I think our method of division was that I assigned the sh'ff's certificate of sale to Rich, and he would get deeds in his own name.

Question. You have stated that the sale of the lands you attended

at Webster court-house was somewhat animated. Please explain what you mean by that expression.

Answer. The sh'ff's deputy, who cried the sale, at the opening of the sale took his position inside of the door at a very old-fashioned writing table. He was surrounded by several of these real-estate agents and lawyers, close at his elbow, and they seemed to have the entire control. The majority of the persons present could not get to see exactly how the sale was progressing. A stranger to me, whose name I heard—do not recollect it now; I think a lawyer by profession—protested sharply against such a proceeding, and notified the deputy that if he did not come out and do the thing legally that he would blow up the whole damn sale. Some epithets
687 were thrown back in rejoinder, but the sh'ff's deputy stopped that proceeding, went out into the open air in front of the court-house, and, I believe, started the sale anew. There was sharp bidding on many of the tracts of land, and one or two controversies arose between competing bidders. I remember that McClenahan, who represented Dan'l Welch, one of the Centre Co. party, became somewhat excited and protested against some part of the proceeding.

Question. Do you still own the lands you purchased, or any part of them? If not, to whom have you sold and conveyed them, if you have conveyed them?

Answer. On the day of the sale I gave away one tract to its former owner. I have since sold a portion of them, and a considerable portion I have forfeited for the non-payment of taxes. Aside from the lands turned over to Rich, I sold to D. G. Bush, Dr. G. F. Hoop, Proctor Myers, Philip Carder, Samuel Christ, and John Tome the Joseph Patterson tract named in the list. I sold to John G. Love the Robert Patterson tract named in the list. I sold to G. F. Hoop one of the Benjamin Reeder tracts. I sold one of the E. & R. Middlebrook tracts to Moses Owens, of Clearfield Co., I think.

Question. Have you now any interest in the Wm. McClearly tract of 100,000 acres or in the Henry Banks tract of 50,000 acres or upwards, or 58,500 acres?

Answer. I don't believe I have, but if the allegation of one of the plaintiffs' attorneys be true, then I would have an interest. The attorney I mean is E. L. Buttrick.

Cross-examination by A. O. FURST, Esq.:

Question. Mr. Owen, at whose instance did Mr. Rich go to West Va. to attend the sales of land?

Answer. At my instance. I introduced the subject to him, went to his place of residence and solicited him to go.

688 Question. About that time was there not considerable interest manifested in Pa. in reference to the purchase of lands in West Va.?

Answer. There was in this part of the State, in Centre Co., and one or two of the adjoining counties.

Question. These plaintiffs allege in this proceeding that you, Mr. Rich, and others conspired and confederated together to pirate or

to defraud them out of their lands, and, as part of that conspiracy, you and these persons had these lands assessed or returned to the assessor for taxation in 1868. Is that true in whole or in part?

Objected to by Judge Ferguson, att'y for pl'ff-.

Answer. No part of the allegation is true. Until May, 1869, I was totally ignorant of West Va. or West Va. lands. I went there as a mere novice. Rich went there rather reluctantly, alleging he — crowded with business.

Question. Had you or Mr. Rich anything to do with the assessment of these lands for taxes?

Answer. Nothing whatever. I never placed or caused to be placed any tract on the books for assessment, and knew nothing of the methods of assessing or methods of sale until the summer of 1869.

Question. In the list of sales attached to your testimony there are certain figures in one column erased; at what time and by whom were they erased?

Answer. I have said I could not answer—and it is not clear in my mind yet.

Question. When was this list made out?

Answer. The morning after the sale by the sh'ff's deputy.

Question. Can you state from this paper who purchased the Wm. McClear*ly* tract?

Answer. From this paper, which is the sheriff's certificate of the sale of the Wm. McClear*ly* tract, it purports to have been
689 bought in by Benjamin Rich.

Question. You have stated in your testimony-in-chief that you recollected something about the Henry Banks tract. Was it also sold at that sale; and, if so, to whom?

Answer. The sheriff's certificate of sale shows it to have been sold to Albert Owen, G. P. Shreve, and Benjamin Rich. I have sold my interest to G. P. Shreve and he transfers to Benjamin Rich.

Question. In your examination-in-chief you spoke of having gone to West Va. about 1st of May, 1869, and having had conversations with Jno. B. Shreve. Was Mr. Rich present at any of those conversations?

Answer. He was not. I did not know Rich until midsummer afterwards.

Question. At this sale on the 24th of Sept., 1869, did you or Mr. Rich, so far as you know, use any artifice or fraud to obtain the title to the lands you purchased?

Objected to by plaintiffs' attorney.

Answer. I used no artifice or fraud. I saw none on the part of Rich, and have no reason to suppose that any such fraud or artifice was resorted to.

(The latter part of answer objected to by plaintiffs' att'y.)

Question. Did you bid openly or publicly for the lands you purchased?

Answer. I did; openly before the whole multitude, and did no bidding inside at the first attempt to manipulate the sale.

Question. How long before the sale did you and Mr. Rich arrive at Webster court-house, where the sale was held?

Answer. One or two days.

Question. Did you know before you got there what lands were advertised for sale?

Answer. I did not.

690 Re-examined by plaintiffs' attorney:

Question. Where did you have the interview with Shreve in May, 1869?

Answer. At his residence in Upshur county.

Question. How came you to go to see him (Shreve) in Upshur Co. with reference to sale of lands in Webster Co.?

(Objected to *be* defendants' attorney.)

Answer. The subject of lands in West Va. was attracting much attention in Centre Co., where I now and then resided; but, independent of that, I went South, prospecting for a home. I went into old Virginia three times and into East Tennessee once. On my return home I was advised by Elijah Chilcote, a neighbor of mine and who had bought an interest in the Budd tract, to go to West Va. and prospect, and he gave me the name of Jno. B. Shrieve and his place of residence. He recommended him as being an old surveyor and more familiar with the lands of the country than anybody else. In view of this information I went to West Virginia and called on Shreve, and the negotiations named in my testimony-in-chief were the result of my interview.

Question. On that occasion, when Shreve showed the book you have spoken of, do you remember whether or not he called your attention to the McClear*ly* or Banks surveys?

Objected to *be* def'ts' att'y as incompetent.

Answer. I am not certain. I am of the opinion that those tracts were named.

Recross-ex. by A. O. FURST, Esq.:

Question. What kind of a book was this?

Answer. It was an old leather book, purported to be Jackson's book of surveys. It purported to be an official book and embraced land now in several counties.

(S'd) ALBERT OWEN.

Witness fees, $1.50, p'd.

Continued until May 31st, 1884.

691 MAY 31ST, 1884.

Parties not appearing, testimony closed.

I hereby certify that the above witness was duly qualified and examined at the time and place stated in the above caption and subscribed his deposition in my presence.

E. M. BLANCHARD,
[SEAL.] *Notary Public.*

In the Circuit Court of the United States in and for the District of West Virginia, Sitting at Parkersburg, in said District.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Chancery.

To the above-named defendants:

Take notice that on the 25th day of April, 1884, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the office of Blanchard & Blanchard, in the town (or city) of Bellefonte, in Centre county, in the State of Pennsylvania, the plaintiffs in the above-entitled suit in chancery, which suit is now pending and undetermined in the above-named court, will commence taking the depositions of Albert Owens, Edward Blanchard, Lewis G. Huling, Abram Waltman, and —— Love and others, to be read in evidence in their behalf at the hearing of said suit, and if for any cause said depositions are not commenced, or, if commenced, are not completed on that day, we will continue the commencement and taking thereof from day to day, Sundays excepted, at the place and between the hours above stated till they are completed.

Dated this 5th day of April, 1884.

TAMLIN BRAXTON ET AL., *Plaintiffs*,
By JAMES H. FERGUSON, *Their Counsel.*

(Endorsed:) "Executed by serving a copy hereof upon Caleb Boggess, the attorney for the within-named defendants, Benj'n
692 Rich *et al.*, at Clarksburg on the 8th day of April, 1884. George W. Atkinson, U. S. marshal, by W. H. Ramp, deputy. Marshal's fees, $2.00."

(With the deposition of Albert Owen above a list of purchases made by him at the tax sale in Webster county, as spoken of in his deposition, was filed, but upon diligent search by the clerk the said exhibit cannot be found.)

And on another day, to wit, on the — day of April, 1885, the following depositions were filed in the clerk's office of said court:

In the Circuit Court of the United States for the District of West Virginia.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Chancery.

To the defendants in the above-entitled suit:

Take notice that on the 16th day of April, 1885, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the auditor's office, in the capital building, in the city of Wheeling, in said district, we will take the depositions of Patrick F. Duffy and —— Cracraft, his first clerk, in auditor's office, to be read as evidence in our behalf at the hearing of the above-entitled suit, now pending in the circuit court of the United States in and for the district of West Virginia, sitting at Parkersburg, in said district, wherein we are plaintiffs and you are defendants, and if said depositions are not completed on that day we will continue the taking thereof from day to day and from time to time at the place and between the hours afore-
693 said until they — completed.

Dated this 7th day of April, 1885.

TAMLIN BRAXTON ET AL., *Plaintiffs*,
By Plaintiffs' —.

I acknowledge service of the within notice this 11th day of April, 1885.

C. BOGGESS,
Counsel for Def't-.

Depositions of witnesses taken before the undersigned, M. T. Frame, a notary public in and for the county of Ohio, in the State of West Virginia, pursuant to the annexed notice, at the auditor's office, in capital building, in the city of Wheeling, Ohio county and State of West Virginia, on this 16th day of April, 1885, between the hours of 8 o'clock a. m. and 8 o'clock p. m. of that day, to be read in evidence on behalf of the plaintiff- in a certain suit in chancery pending in the United States circuit court for West Virginia, in which suit Tamlin Braxton *et als.* are plaintiffs and Benjamin Rich *et als.* are defendants.

Present: Col. B. W. Byrne, attorney for plaintiffs, and —— ——, attorneys for defendants.

694 PATRICK DUFFY, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

1 Q. State your name, occupation, and place of residence; if any, what officeal position you hold.

Ans. Patrick F. Duffy. I am auditor of the State of West Virginia. I reside at present at the city of Wheeling, Ohio county, West Virginia.

2 Ques. Have you, as such auditor of the State, the custody of the

several land books of the counties of the State on which land was charged for taxation, particularly in the counties of Randolph, Pocahontas, Webster, Nicholas, and Greenbrier, for the year 1863 and up to and including the present time?

Ans. As auditor I have charge of all the books in the auditor's office. I find on examination that the land books in which lands are charged for taxation for the county of Randolph are in the office and in my custody for the year 1861 down to and including 1884; Pocahontas, for the year 1866 down to and including 1884; Webster, for the year 1866 down to and including the year 1884; Nicholas, for the year 1866 to and including the year 1884, and for Greenbriar county for the year 1866 down to and including the year 1884.

3 Ques. State if you find a tract of 100,000 acres of land charged with taxes in either of said counties in the name of William McClary, William McCleery, or Count Clifford de Flury, for the year
695 1861 or any *any* intervening year from that date down to 1868.

Ans. I find by examination of the books in my office that there was no land charged in the name of Wm. McClary, William McCleery, or Count Clifford de Flury in the county of Webster beginning with and including the year 1866, that being the first land book on file in my office for said county. I do find a tract of 100,000 acres of land charged in the name of Wm. McClary in the land books of Webster county for the year 1868, in Glade district, on Gauly and Williams rivers. This entry was made without any note or explanation by the assessor. There appears to be no back taxes charged on said tract.

4 Q. State how long this land of 100,000 acres remained charged on the books to said Wm. McClary. What disposition was made of it?

Ans. One year, the year 1868, this tract of 100,000 acres was returned delinquent by the sheriff for the taxes of 1868 and sold by the sheriff in 1869 for the taxes of 1868, and it does not appear on the said land books for the year 1869 or any subsequent year in the name of Wm. McClary. The tract of 100,000 acres so sold was purchased by Albert Owen and Benjamin Rich.

5 Ques. State whether or not this tract of 100,000 acres was charged on the land books of Webster county for the year 1869 in the name of said purchasers, Owen and Rich.

Ans. It does not appear in the year 1869 to have been
696 charged on the land books in the name of either Owen or Rich, nor is the said tract of 100,000 — charged on the land books of Webster county for the year 1869 in the name of any person.

6 Ques. State whether or not this tract of land was entered and charged for taxation in 1870 in the name of Rich or Owen or Rich and Owen.

Ans. It does not appear charged in the land books of Webster county in the name of Rich & Owen or Rich or Owen.

7 Ques. State what the land books of Webster county show in

relation to a tract of 100,000 acres charged in the name of Viscount Clifford de Flury.

Ans. The land books of Webster county show a tract of 100,000 acres in Glade district charged in the name of Flury, Viscount Clifford de, for the year 1870, described as lying on Gauly and Williams rivers southwest 10 miles from C. H., for the year 1870, in that name, and sold by the sheriff of Webster county in the year 1871 for the taxes of 1870, and bought at such sale by Benjamin Rich and T. Conrow. B. Rich is charged on the books of 1871 with a tract of 100,000 acres described as situate in Glade district, on Gauly and Williams rivers, with a note in the colum- for remarks, "Transferred from Flury."

8 Ques. You state that a tract of 100,000 acres of land was charged on the land books of Webster county for the year 1870 in the
697 name of Flury, Viscount Clifford de. State whether or not this charge is made on the land books in alphabetical order.

Ans. I find it entered on the land books between the letters M and N and not alphabetically.

9 Ques. State whether or not — is entered on the land books in the same handwriting that the land books were made out in for that year.

Ans. The entry of 100,000 acres in the name of Flury, Viscount Clifford de, for the year 1870 appears to be in a different handwriting from the handwriting on the same page, except footings, which seem to be the same.

10 Ques. State, if you can, in whose handwriting the entry of 100,000 acres in the name of Flury, Viscount Clifford de, was made.

Ans. I think it is in the handwriting of James Woodzell, of the county of Webster.

11 Ques. Are you well acquainted with the handwriting of James Woodzell, of the county of Webster, and have you seen him write?

Ans. I have seen him write and am familiar with his handwriting.

12 Ques. State whether or not there have been any changes or errasures of the additions of the colum-s of figures on the land books on the page on which the above-described entry was made.

Ans. There appear to be errasures in the additions of several colum-*es*.

698 12 Ques. State whether in entering the tract of 100,000 acres in the name of Flury, Viscount Clifford, in 1870 it was entered with back taxes for any year or years, and whether there were any remarks or explanation of said entry appearing on said books.

Ans. It does not appear to be charged with back taxes for any year or years on said books, nor does there appear to be any remarks or explanations on the said land books touching the entry of said land.

13 Ques. Will you furnish a copy of the page of the land book

for 1870 upon which the entry of 100,000 acres in the name of Flury appeared?

Ans. Yes, sir; I will. I herewith furnish a copy, marked Exhibit A, and ask to make it a part of my answer. This copy has been prepared and certified by Joseph S. Miller as auditor of the State of West Virginia, which copy, on examination, I find to be correct.

14 Ques. Have you a copy of the delinquent list returned by the sheriff of Webster county showing delinquent lands for the year 1870 for said county of Webster? If so, please file it and make it a part of your deposition.

Ans. I have a copy of the delinquent list prepared and certified by Joseph S. Miller as auditor of the State of West Virginia, which I file as Exhibit B of my deposition. I find the same, on comparison with the list on file in my office, to be a true copy. The note in red ink seems to have been made after the list came to this office; also the figure- 40.00 and 20.00.

699 15 Ques. State for what years prior to 1868 the following tracts were or were not on the land books for the counties of Webster, Pocahontas, Nicholas, and Greenbrier or either or any of them and charged with taxes to the following-named persons, to wit: 58,500 acres or 58,000 acres in the name of Henry Banks; 12,500 acres in the name of George Messingbird; a tract of 105,000 acres in the name of James Welch; a tract of 65,000 acres in the name of Francis Highland.

Ans. The Banks tract of 58,500 acres appears to be charged on the land books of Webster county, in Fork Lick district, for the first time for the year 1868, in the name of Henry Banks. It was not charged on the land books of said county to the said Henry Banks for the year 1866 or 1867. The books prior to said years for said county is not in my office. It was returned delinquent in the name of Henry Banks for the non-payment of taxes for the year 1868 and sold by the sheriff of Webster county in the year 1869 and purchased — A. Owen, G. P. Shreve, and B. Rich. The land appears to have been omitted from the books for the year 1869. In 1870 the land appears to have been charged to Henry Banks, and again omitted from the land books for the year 1871 in the name of Henry Banks. The land for the year 1870 was returned delinquent in the name of Henry Banks and paid to the sheriff of Webster county before sale, in 1871. It was entered on the land book for 1872 in the name of B. Rich.

700 16 Ques. You have stated that the land was omitted from the land books for the years 1869 & 1871, and that in the year 1872 it was entered on the books in the name of Rich, Benjamin. Does it appear to have been charged with back taxes for the year- 1869 and 1871 or not?

Ans. No; it seems there were no back taxes charged for the years 1869 and 1871 at the time it was entered and charged to Benjamin Rich, in 1872, nor was the back taxes charged at the time it was entered in the books to Henry Banks, in 1870, for the year 1869.

17 Ques. State what the land books in your office show with reference to the charge on said books for taxation of the following-named

tracts in the counties of Webster, Randolph, Pocahontas, Nicholas, and Greenbrier since the formation of the State of West Virginia, of a tract of 12,500 acres in the name of George Messingbird, a tract of 105,000 acres in the name of James Welch, a tract of 65,000 acres in the name of Francis Highland, and all that the land books in your office show with reference to the charges of said tracts of land with taxes.

Ans. I find a tract of 105,000 acres from the land books of Webster county in the name of James Welch for the years 1868, 1869, & 1870 returned delinquent for the taxes of 1868 and sold in 1869 for said taxes by the sheriff of said county & purchased by Albert Owen; said land was also returned delinquent for the years 1869 &
701 1870. This tract then appears upon the books for 1871 in the names of B. Rich & T. Conrow, with the remark, "Transferred from James Welch." I also find a tract of 12,500 acres on the land books of Webster county charged in the name of George Messingbird, for the years 1868 and 1870, was purchased at a sale for taxes by A. Owen and B. Rich in 1869. This tract then appears upon the books for 1871 in the name of B. Rich, transferred from George Messingbird. It appears in the land books of 1870 in the name of George Messingbird. I also find a tract charged on the land books of Webster county in the name of Francis Highland for the years 1874 & 1875, containing 65,734 acres, with the remark, "Heretofore charged 105,000 acres to B. Rich." I find no land charged on the land books of Webster county in the name of James Welch—George Messingbird prior to the year 1868. I have caused a careful examination to be made of the land books of Randolph, Pocahontas, Nicholas, and Greenbrier counties, and there appears to be no land charged to either George Messingbird, James Welch, or Francis Highland in any of said counties. The tracts of 12,500 acres and 100,000 seems to have been regularly charged on the land books of Webster counties and assessed with taxes in the name of B. Rich and the tract of 105,000 acres appears to be charged with taxes in the years 1872 & 1873 in the name of B. Rich and charged in the name of Francis Highland as a tract of 65,734 acres, with an
702 explanation: "Heretofore charged 105,000 acres to B. Rich," and appears also on the land books of Webster county for the year 1875, that being the last book I have examined, as the other land books are boxed up preparatory to shipment to Charleston.

18 Ques. Will you state what the land books for the counties of Webster and Nicholas in your office show in reference to the charges of lands with taxes in the name of Allen T. Caperton or the heirs of Allen T. Caperton?

Ans. I have caused an examination to be made with reference to said lands and now file a certified statement showing how the land appears on said books and file the same as Exhibit "C" of my deposition.

Cross-examination:

Ques. 1. In your answer to the 8th question-in-chief you state

that the entry on the land books of 1870 in the name of Henry Viscounte Clifford de — was not placed in its a-phabetical order, but was placed between the letters M & N. Are there not other entries in the same book which are not placed in their alphabetical order?

A. I don't find any other not alphabetically entered in that year, but I do for other years.

Ques. 2. Please state whether the said book was made out by more than one person except the entries in the handwriting of James Woodzell.

Ans. I think there are at least two or three besidees Woodzell's.

703 Ques. 3. Please state what position, if any, was held by James Woodzell in Webster county in the year 1870, whose duty was thereby in any way connected with the making out, examining, and certifying the assessor's book for that year and county.

A. James Woodzell was recorder of Webster county for the year 1870.

Ques. 4. Are there any other errasures or changes of the additions of columns of the said land book other than the ones on the pages you have referred to?

Ans. Yes; I find other errasures.

Ques. 5. On what page of the said book for Glade township is the entry of the De Flury land made?

Ans. On page five.

Ques. 6. Please examine the footings of the several columns on page five which have been errased or altered and state how they compare with the recapitulation of that township.

Ans. Well, they are an exact copy.

Ques. 7. State whether in the entries in the recapitulation of the aggregates or footings of the several columns on page 5, containing the entry of the De Flury land, there is any evidence or indication of errasure or alteration; if so, state what they are.

Ans. There is no evidence of errasure or alteration except possible in the column of the number of acres in the recapitulation on 5th page; the number of acres appears to be 452,573; the
704 first three figures, "4," "5," "2," have not been changed; the last two figures, 7 & 3, also have not been changed; the fourth figure, 5, possible may have been changed or altered.

Ques. 8. State what the several footings are in the recapitulation aforesaid, the amount of each and what they refer to.

Ans. The first is 452,573 acres; total value of land and buildings, $94,858.10; amount of tax on the whole tract at 20 cents on every $100 value thereof, $189.71; amount of tax for free school purposes at 10 cents on every $100 value thereof, $94.58. There is another column without any heading to indicate what it is for, but I believe it is tax for the construction of hospital. In another column headed county levy, being 100 cents on every $100 value thereof, I find $948.85. In another column, headed township levy, being 10 cents on every $100 value thereof, I find $85.47.

Ques. 9. Look at the recapitulation of said book for the entries

therein of the totals of the several townships in the said county and state whether the entry in said recapitulation of the aggregate of the several quantities, values, and taxes of Glade township have been altered or erased or changed since first made.

Ans. There is no evidence of any erasures, alterations, or changes. In the column headed No. of acres I find 726,474 acres; value of buildings, $721.20; value of land and buildings, $183,777.49; tax for State purposes, $367.53; tax for free schools, $183.49; county levy, $1,854.07; township levy, $174.38; for the construction of hospital, 5 cents on every $100, $91.82.

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Ques. 10. State whether these several sums and quantities in the recapitulation of Glade township correspond with the footings or aggregates of the page of said township heretofore referred to, including the entries on page 5 of the assessment books.

Ans. I have examined the several sums and quantities in the recapitulation and footing of the aggregate in Glade township, page 5, and find a mistake in the recapitulation of 27 cents. The recapitulation shows $94.58 and the footing on said page shows $94.85; page 1, the recapitulation shows $67.40 and the footings show $67.04; on page 6 the recapitulation shows $429.80 and the footings show $429.78.

Ques. 11. State whether the said land book for Webster county for the year 1870 containing the entry of 100,000 acres in Glade township in the name of De Flury was duly verified by the assessor and the examination and correction thereof duly certified by the recorder of said county. If so, when were said verification and certification made?

Ans. The said book was, on the 6th day of September, 1870, by Andrew McIlwain, assessor of said county of Webster, by oath subscribed and sworn to before Thomas M. Reynolds, a justice of said county. The said book has a certificate of James Woodzell showing the examination and —. The following is a copy of said verification and certificate, as well as that of the delivery thereof to the sheriff of said county:

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Oath and Certificate on Land Book.

I, Andrew McElwain, assessor for the —— of Webster county, do swear that in making out the foregoing land book I have to the best of my knowledge and ability pursued the law prescribing the duties of assessors, and that I have faithfully discharged the duties required of me in assessing improvements upon lands, and that I believe the entries, additions, and recapitulations are correct and like the other two copies of the land book made by me for my district in the present year, so help me God.

ANDREW McELWAIN, *Assessor.*

Sworn and subscribed to before me, a justice of the county of Webster, on this 6th day of September, 1870.

THOS. M. REYNOLDS, *Just.*

I do hereby certify that I delivered on the 6th day of September,

1870, a true copy of the foregoing book to Chas. McDodrill, sheriff of Webster county.

ANDREW McELWAIN, *Assessor.*

I hereby certify that I have carefully examined the foregoing land book; that I have compared it with the land book for the preceeding year, with the records of my office where necessary, and with such lists, abstracts, and statements from other offices as the assessor laid before me; that such errors that were found in
707 said — were corrected by me according to law, and that the additions and recapitulations correspond with the two other land books examined by me.

JAMES WOODZELL,
Recorder, Webster County."

Ques. 12. Examine said book and state whether it bears any marks of having been altered or changed in any respect since it was returned to your office; if so, you will please state particularly in what part it has been so changed or altered.

Ans. I have examined the said book and don't discover any mark or evidence of its having been changed or altered since it was certified & returned to this office.

And further deponent saith not.

P. F. DUFFY.

STATE OF WEST VIRGINIA, *Ohio County,* } *To wit:*

I, M. T. Frame, a notary public within and for the county of Ohio, in the State of West Virginia, do certify that the foregoing deposition of Patrick F. Duffy was duly taken by me and sworn to and subscribed before me at the times and place and between the hours in said notice specified and in said depositions and adjournments thereto fully set out.

Given under my hand this 18th day of April, 1885.

M. T. FRAME,
Notary Public.

708 And on another day, to wit, on the 9th day of May, 1885, the following depositions were filed in the clerk's office of said court:

In the Circuit Court of the United States for the District of West Virginia.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Chancery.

To the defendants in the above-entitled suit:

Take notice that on the 29th day of April, 1885, at the office of the register of the land office, in the capital building, in the city of

Richmond, in the State of Virginia, between the hours of 8 o'clock a. m. and 8 o'clock p. m., we will commence taking the depositions of Martin Marye, J. A. Wingfield, and Robert Stiles, to be read as evidence in our behalf at the hearing of the above-entitled suit now pending in the circuit court of the United States in and for the district of West Virginia, sitting at Parkersburg, in said district, wherein we are plaintiffs and you are defendants, and if said depositions are not completed on that day we will continue the taking thereof from day to day and from time to time, at the place and between the hours above stated, until they are completed.

Dated this 7th day of April, 1885.

TAMLIN BRAXTON ET AL.,
Plaintiffs, by Counsel.

I acknowledge service of the within notice this 11th day of April, 1885.

C. BOGGESS,
Counsel for Def'ts.

709 "J. H. F." Filed with Deposition of J. A. Wingfield as Part Thereof. W. C. Truman, N. P.

Memorandum for Register of Land Office.

1. Is there a survey of a tract of land of 12,500 —, purporting to have been made for George Messingbird on or about the 11th day of May, 1795, in Randolph county, found on the books of your office; and, if so, did a grant ever issue therefor either to Messingbird or to any one as his assignee?

2. Is there a survey of 105,000 acres, purporting to have been made for James Welch on or about the 1st day of June, 1795, in Randolph county, found on the books of your office; and, if so, did a grant ever issue to the said Welch or to any one else therefor?

3. Is there a survey of 58,000 acres or 58,500 acres, purporting to have been made in Randolph county for Henry Banks about 1795, found in your office, and did a grant issue to Banks for such tract? It will be found, as I understand it, that Banks made a number of smaller surveys amounting in the aggregate to about the above quantity, and that patents issued to Banks for a part of said surveys, and to others as his assignees for the others.

Ascertain the facts in this matter.

JAMES H. FERGUSON.

"J. A. W."

COMMONWEALTH OF VIRGINIA, LAND OFFICE,
RICHMOND, VA., *April 29th*, 1885.

I, Joseph A. Wingfield, register of the land office of the State of Virginia, do certify that as such officer I have the custody of the land books, records of surveys made, and patents issued of all
710 the counties now in the State of West Virginia, which formerly constituted a part of the State of Virginia, and especially

of the land books, records of surveys made, and patents issued of the counties mentioned below.

And I do further certify that there is no survey of a tract of land of 12,500 acres made or purporting to have been made for George Messingbird or Mesinbird on or about the 11th day of May, 1795, in Randolph county, found on the books of this office, and that no grant ever issued therefor either to said Mesinbird or Messingbird or to any one as his assignee.

I further certify that there is no survey of a tract of land of 105,00- acres made or purporting to have been made for James Welch on or about the 1st day of June, 1795, in Randolph county, found on the books of this office, and that no grant ever issued therefor to James Welch or to any one as his assignee.

And I do further certify that the records of this office establish the fact that a connection of 53 surveys of land lying and being in the county of Randolph were made for Henry Banks on the waters of Elk and Gauley rivers and aggregating 58,500 acres; that 43 of said surveys were filed in this office for *for* grants and titles issued accordingly, but that 10 of said surveys do not appear upon the records of this office. This body of land was granted as follows, viz:

9 tracts of 1,000 acres each to Henry Banks.

1 tract of 4,500 and 4 tracts of 1,500 and 29 tracts of 1,000 acres each were assigned by said Banks and granted by the Commonwealth to his various assignees. The residue of said surveys do not appear upon the records of this office as having been filed or patented to any one, but are mentioned in describing metes and bounds of adjoining tracts as numbers 14, 15, 18, 31, 32, 33, 34, 35, 36, and 37, for which no grant to correspond is recorded.

711 I further certify that no one survey of 58,500 or 58,000 acres for lands in Randolph county and on waters of Elk and Gauley rivers has ever been recorded in this office, and no grant to correspond therewith has been issued by the Commonwealth of Virginia.

Witness my hand and seal of office this 29th day of April, 1885.

JOSEPH A. WINGFIELD,

[SEAL.] *Reg. Land Office.*

(Endorsed: "J. A. W." Filed with the deposition of J. A. Wingfield as a part thereof. W. Cabell Trueman, N. P.")

"J. H. F. No. 2." "Memo. for Auditor Public Accounts. Filed with Deposition of the Witness Morton Marye as a Part Thereof. W. Cabell Trueman, N. P."

Memorandum for the Auditor of Public Accounts.

Please examine the land books in your office for Randolph and Greenbrier counties as to the following tracts of lands between 1795 and 1815:

1. A tract of 100,000 acres granted to William McCreery, or McCleery, on or about the 21st day of January, 1796. Is such a tract

charged in either county for any year prior to 1815, or for that year, in the name of William McCreery, or McCleery? And if so charged for any year when did said tract disappear from the land books in that name?

2. Is there any record evidence in your office of the redemption of said tract of land from forfeiture in either of said names prior to the year 1839?

3. Is said tract of land omitted to be entered and charged with taxes on the land books of the counties of Randolph, Green-
712 brier, and *and* Nicholas, for any five years since the year 1831 and prior to 1852, in either of the above names?

4. Was the said tract of land entered on the land books of either of the counties of Randolph, Greenbrier, Nicholas, or Webster in the year 1852 or 1853, or at any time prior to the 20th day of June, 1863, and charged with taxes in either of the above names?

5. The same inquiries in regard to a tract of land of 58,000 or 58,500 acres in the name of Henry Banks; and, if no such tract is found, the same inquiries in regard to a number of smaller tracts said to have been granted to Banks about 1795, '6, or '7, in Randolph county.

6. The same inquiry in regard to a tract of 12,500 acres in the name of George Messingbird.

7. The same inquiry as to a tract of 105,000 — in the name of James Welch.

JAMES H. FERGUSON.

"M. M."

COMMONWEALTH OF VIRGINIA,
OFFICE AUDITOR PUB. ACC'TS, RICHMOND, VA.

I hereby certify that I have caused the land books in my office for the counties of Randolph, Greenbrier, Nicholas, and Pocahontas to be carefully examined by a competent clerk, in my office, with reference to the charges on the land of said counties for taxation of the following tracts of land, to wit:

A tract of 100,000 acres in the name of William McClary; a tract of 58,000 acres or 58,500 acres in the name of Henry Banks;
a tract of 12,500 acres in the name of George Messingbird;
713 a tract of 105,000 acres in the name of James Welch, and a tract of 65,734 acres in the name of Francis Highland.

There appears to be no tract of 100,000 acres of land charged for taxation to Wm. McClary, nor to Wm. McCleary, nor to Wm. McCleery, in Randolph county, from the year 1801 to the year 1861, both inclusive; nor in Greenbrier county from 1795 to 1863, both years inclusive; nor in Pocahontas from 1822 to 1861, both years inclusive; but there appears to be a list of land charged on the land books of Nicholas county, now in my office, of 100,000 acres in the name of William McCreary for the years 1840 to 1850, both years inclusive; the said tract was returned delinquent for all of said years in the aggregate sum of $297.50, for which it was sold and purchased by the Commonwealth of Virginia in the year 1850, from

whom it was not redeemed up to 1860, at which time it disappears from the land book of said county.

That no tract of 58,000 acres or 58,500 acres appears on any of the land books of said counties for the years mentioned above in the name of Henry Banks.

That no tract of 12,500 acres appears on any of said books of said counties for any of said years in the name of George Messingburg, or George Messingbird, or George Messinbird.

That no tract of 105,000 acres appears on any of said books os said counties for any of said years in the name of James Welch.

That no tract of 65,734 acres appears on any of said books of said counties for any of said years in the name of Francis Highland.

There is not found in this office any land book returned from Webster county.

MORTON MARYE,
Auditor of Public Accounts, Commonwealth of Virginia.

April 29th, 1885.

(Endorsed:) "M. M." Filed with the deposition of Morton Marye as part thereof. W. Cabell Trueman, N. P."

714 The depositions of Morton Marye and others, pursuant to notice hereto annexed, before me, W. Cabell Trueman, a notary public in and for the city of Richmond, in the State of Virginia, at the office of the register of the land office, in the capitol building, in the city of Richmond, in the State of Virginia, between the hours of 8 a. m. and 8 o'clock p. m., to be read as evidence on behalf of the plaintiffs in a certain suit in equity now pending in the circuit court of the United States in and for the district of West Virginia, wherein Tamlin Braxton *et al.* are pl'ffs and Benjamin Rich is defendant.

Present: B. W. Byrne, counsel for plaintiffs.

JOSEPH A. WINGFIELD, a witness of lawful age, being first duly sworn, deposes and says as follows:

By B. A. BYRNE, counsel for pl'ffs:

1st question. State your name, age, residence, and occupation.

Answer. Joseph A. Wingfield; age, about 50; register of the Virginia land office.

2nd question. Have you received a memorandum of questions signed "James H. Ferguson," touching the existence or non-existence on the records of your office of certain surveys and grants for certain tracts of land now in the State of West Virginia? If yea, please produce such memorandum, consider the questions therein as now propounded to you seriatim, and give your answer or answers thereto.

Answer. I have received such a memorandum and herewith hand it to the notary, requesting him to identify it by marking it "J. H. F." I have considered said questions seriatim, and herewith file

my official certificate as register of the land office of the State of Virginia, marked "J. A. W.," as my answer to said questions, and make the same a part of my deposition. Said certificate is true and correct and in due form of law.

715 3rd question. Please state whether, as register of the land office of the State of Virginia, you are the proper legal custodian of the land books and records of surveys made and patents and grants issued for lands in the counties formerly in Virginia and now constituting parts of the State of West Virginia, and particularly the counties of Randolph, Webster, Greenbrier, and Pocahontas, and whether such books, surveys, grants, and patents are parts of the records of your office.

Answer. To the whole of this question I answer yes.

And further this deponent saith not.

JOSEPH A. WINGFIELD.

ROBERT STILES, a witness of lawful age, being first duly sworn, deposes and says as follows:

1st question. What is your name, age, residence, and occupation?

Answer. My name is Robert Stiles; residence, Richmond, Va.; and I am forty-eight years old; occupation, lawyer.

2nd question. If you know, give the names of the heirs-at-law of A. T. Caperton, deceased, and, if any of his daughters are married, state that fact, and give the names of their respective husbands.

Answer. I am thoroughly acquainted with the facts called for in the question, having married one of Mr. Caperton's daughters nearly eleven years ago and having been, of course, intimate with the family from a period of time prior to my marriage. Mr. Caperton left six daughters and one son, he himself having died some years ago. His daughters are as follows: Eliza J. Caperton, unmarried; she frequently writes her name Lizzie J., or L. J., or E. J.; Mary C. Braxton, wife of Dr. Tamlin Braxton, of King William county, Virginia; Harriet C. Gordon, wife of Wm. A. Gordon, of Washington, D. C.; her name was originally Harriet E., but most or all of the ladies of the family, upon marriage, dropped the middle name originally given them and inserted in lieu thereof the family name,

716 Caperton; they may at times make use of the original name or the initial letter thereof; Malinda C. Patton, widow of Hon. James F. Patton, deceased, of the supreme court of appeals of West Virginia; residence, Union, Monroe Co., West Virginia; Mrs. Patton is always called "Lin." and writes her name "Lin. C." or "L. C." Patton; Lelia C. Stiles, wife of the deponent, Robert Stiles, of Richmond, Va., and Ella Caperton, now deceased. Mr. Caperton left but one son, who still survives—Allen Caperton, of Union, Monroe county, West Virginia. Mr. Caperton also left a widow, who still survives—Mrs. Harriet E. Caperton, who resides with her son, Allen, at Union; and Mr. Allen Caperton is also married, his wife being named Bettie Rowan Caperton. I do not know whether either or both of the ladies last mentioned are parties to the suit in which these depositions are taken, nor do I know in which of

the several forms above given the names of the heirs who are parties occur in this suit.

And further this deponent saith not.

ROB'T STILES.

MORTON MARYE, a witness of lawful age, being first duly sworn, deposes and says as follows:

1st question. Please state your name, age, residence, and occupation.

Answer. Morton Marye; age, 53; auditor of public accounts of the State of Virginia; residence, Ashland, Va., temporarily.

2nd question. Are you the legal custodian of the land books of the counties formerly of the State of Virginia, but now forming a part of the State of West Virginia?

Answer. I am, for the time that these counties were parts of the State of Virginia.

3rd question. Have you received a memorandum of questions signed "James H. Ferguson," as to the appearance on the
717 records of your office of certain tracts of land in certain counties now parts of the State of West Virginia? If yea, please produce such memorandum, consider the questions as now propounded to you seriatim, and give your answer or answers thereto.

Answer. I have received such memorandum, and herewith hand it to the notary and request him to identify the paper by marking it "J. H. F. No. 2," and I here also hand the notary my official certificate as auditor, covering the points contained in said memorandum of questions, as my answer thereto, requesting him to identify the paper by marking it "M. M." and to make it a part of my deposition.

And further this deponent saith not.

MORTON MARYE.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, W. Cabell Trueman, a notary public in and for the city of Richmond, in said State, do hereby certify that the foregoing depositions were duly taken, sworn to, and subscribed before me at the time and place and for the purpose in the notice and caption stated therein; and I do further certify that I am not counsel for either party nor in any way interested in the suit or controversy in which the said depositions are taken.

Given under my hand and official seal, at Richmond, in the State of Virginia, this 30th day of April, 1885.

[SEAL.] W. CABELL TRUEMAN, *N. P.*

Fee for taking depositions, $4.00, paid by plaintiffs.

718 And on another day, to wit, on the 11th day of May, 1885, the following depositions were filed in the clerk's office of said court:

In the Circuit Court of the United States in and for the District of West Virginia.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Chancery.

To the defendants in the above-entitled suit:

Take notice that on the 20th day of April, 1885, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the clerk's office of the circuit court of the county of Webster, West Va., in the said county of Webster, in said district, we will commence taking the depositions of James S. Craig, Solomon Taylor, Bernard Mollohan, Hinkle Cogar, James Mullens, Ballard P. Conrad, Benjamin Conrad, C. W. Benedum, R. Clevinger, B. M. Yeager, to be read as evidence in our behalf at the hearing of the above-entitled suit now pending in the circuit court of the United States in and for the district of West Virginia, sitting at Parkersburg, in said district, wherein we are plaintiffs and you are defendants, and if said depositions are not completed on that day we will continue the taking thereof from day to day and from time to time at the place and between the hours above stated until they are completed.

Dated this 7th day of April, 1885.

TAMLIN BRAXTON ET AL.,
Plaintiffs, by Counsel.

I acknowledge service of the within notice made this 11th day of April, 1885.

C. BOGGESS,
Counsel of Def't-.

719 Depositions of witnesses, taken before the undersigned authority in and for the county of Webster, in the State of West Virginia, pursuant to the annexed notice, at the clerk's office of the circuit court of the county of Webster, State of West Virginia, on this 20th day of April, 1885, between the hours of 8 o'clock a. m. and 8 o'clock p. m. of that day, to be read in evidence on behalf of the plaintiffs in a certain suit in —, pending in the circuit court of the United States in and for the district of West Virginia, at Parkersburg, West Virginia, in which suit Tamlin Braxton and others are plaintiffs and Benjamin Rich and others are defendants.

Present: Col. B. W. Byrne, attorney for plaintiffs, and —— ——, for defendants.

C. W. BENEDUM, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

By counsel for plaintiffs:

Question 1st. Please state your age, your residence, and your occupation.

Ans. I am 45 years of age; reside in Addison, Webster county; am clerk of the county court of said county.

Ques. 2nd. Please state whether, as such clerk, you are the custodian of the land books of Webster county, in which lands are charged for taxation, and also whether or not you have charge of the delinquent lists of delinquent lands and of sales by the sheriff and of the purchasers under sales of such.

Ans. I am the custodian, as such clerk, of the land books in which lands are charged for taxation. I have charge of the delinquent lists of delinquent lands and of sales by the sheriff and of the names of purchasers under such sales and the record of sheriff's reports of sales.

On motion of plaintiffs' counsel, B. W. Byrne, the further taking of these depositions *are* continued until to-morrow morning, at the same place and between the same hours specified in the notice.

B. C. CONRAD,
Notary Public.

720 APRIL 21ST, 1885.

The taking of these depositions was this day resumed at the clerk's office of the circuit court, the place specified in the notice and the caption to these depositions.

Present: Col. B. W. Byrne, attorney for plaintiffs.

BROWN M. YEAGER, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

By counsel of plaintiffs:

Ques. 1st. Please state your age, your residence, and your occupation.

A. I am about 36 years of age. I live near Travelers' Repose, in Pocahontas county, West Virginia. I am a surveyor of lands by profession.

Q. 2d. Please state whether or not you were appointed special surveyor by the circuit court of the United States for the district of West Virginia, in a chancery cause pending in said court in which Tamlyn Braxton & others are plaintiffs and Benjamin Rich and others are defendants.

A. I was appointed special surveyor by that court to execute an order of survey directed by said court and dated 8th day of August, 1883, in the suit of Tamlyn Braxton and others against Benjamin Rich and others.

Q. 3rd. State whether or not you gave notice to the parties to said suit stating the time and place, when and where you would begin to execute said survey.

A. About the 1st of September, 1883, I received a letter from Col. B. W. Byrne, stating that the plaintiffs would be ready to commence surveying on the 24th day of that month; also stating that he would notify the defendants that we would commence on the 24th,

at the town of Addison, Webster county. At that time I
721 met Col. Byrne at that point, who handed me a notice, the service of which had been accepted by himself, as one of the attorneys for the plaintiffs, and by Caleb Boggess, as attorney for the defendants, which notice I filed with my report in this case (which order and notice is marked A & B respectively) and forwarded the same to the clerk of the circuit court of the United States at Parkersburg.

Q. 4th. Please state whether you made the survey according to the directiens of the respective parties to this suit; and, if so, state in detail what surveying you did and what you found, if anything, as evidence of identity of the several tracts of land claimed by the plaintiffs and the defendants in this suit.

A. I executed the order of survey by completing all the work that was required by either party to this suit, all of which is shown in my report of survey and accompanying plat, marked "X Y," which I hereby make a part of this deposition; which report is as follows:

Pursuant to an order made by the circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 8th day of August, A. D. 1883, in the case of Tamlin Braxton *et al. vs.* Benjamin Rich *et al.*, appointing me a special surveyor in this cause to do and perform such surveying therein as either party may require, after having given notice to the parties that I would proceed on the 24th day of September, 1883, from the town of Addison, in the county of Webster, West Virginia, to execute the order of survey made in said cause by said court, which order and notice are herewith filed, marked "A" and "B" respectively, I proceeded to the said town of Addison on the day named in said notice, where I met B. W. Byrne, one of the counsel for the plaintiffs in this cause, there being no one present to represent the defendants in said cause, and on the next day I commenced to execute the said order of survey. At
722 the request of said B. W. Byrne I commenced surveying at a point in the said town of Addison shown to me by said Byrne and the residents of the neighborhood as the place where a hickory tree formerly stood, which tree is called for in a grant from the Commonwealth of Virginia to John Holmes, George Gale, and George Harness for 100,000 acres, granted on the 10th day of June, 1796, which tree is described in said grant as standing 30 or 40 poles from Fork lick. From this point I ran S. 88 W. 44 po. to said lick, which is situated in and near the forks of Elk river. Thence from the place of beginning, which is marked with the letter A on the maps which accompanies this report, I ran with the calls of the grant to the said Holmes, Gale, and Harness, allowing 3 degrees' variation, S. 47 E. 280 po. up Elk river to "B." There is no corner tree called for at this point in said grant. From this point I ran S. 67 E. 360 po. to C. A white oak is called for at this point, which I could not find. From this point I ran N. 88 E. 280 po. to "D," a chestnut, the begin-

ning corner of the said grant to Holmes, Gale, and Harness, and described in said grant as being a corner to Henry Banks.

This tree is standing on a hillside on the south side of Elk river, 62 po. from said river by a line bearing S. 69 W., and is marked to suit the calls of said grant to Holmes, Gale, and Harness; also marked to suit the calls of a grant from the Commonwealth of Virginia to Marcus Eliam, assignee of Samuel McCran, assignee of James Hines, who was assignee of Henry Banks, granted on the 16th day of April, 1791, for 1,000 acres, the said grant to Holmes, Gale, & Harness, allowing 3 deg. variation, S. 38 W., crossing Gauley river three times 774 po. to S, a point on the old county line formerly dividing the counties of Greenbrier and Harrison. I then began at "H," a chestnut in the edge of laurel, shown to me by Samuel Given as a corner to a survey of 153,900 acres granted by the Commonwealth of Virginia to Robert Morris, assignee of Hudson Martin, granted on the 25th day of March,
1795, and from this point I ran with the calls of said grant,
723 allowing 3 deg. variation, N. 58 E. 30 po., crossing Upper
Glade run, near below the falls in same, to "I." A maple is called for at this point, which I could not find. I then ran with the next call N. 22 W. 110 po. to "J." Two white oaks are called for at this point, which I could not find. I then ran with the next call N. 27 E. 460 p's to a point on the said old county line 30 p's east of a poplar standing on said line at "K," which tree is claimed by the plaintiffs as one of the two poplars called for in said grant, and described in said grant as standing on said county line. This tree is marked plainly with three marks on the side bearing S. 25 W. and on the side bearing N. 55 W. I blocked one of the marks on the side bearing S. 25 W., which block is herewith filed and marked "B. M. Y." This tree is also marked on the side bearing S. 55 E., which marks appear to have been made more recently. From this point I ran with the next call in said grant, which calls to run with the said old county line, S. 52¾ E. Crossing Gauley river at 500 p's, I intersected the line of the said Holmes, Gale, and Harness grant at 510 p's. I found a sugar and chestnut marked as a corner at 890 p's, "R." I crossed Williams river at 2,760 p's, in all 2,900 p's, to "L," a birch and two spruce pines and pointers on the side of the mountain between the forks of W'ms river, which is the beginning corner of a survey of 9,330 acres granted to Austin Hollister on the 1st day of November, 1855. I blocked some line trees on the last line run, which appeared to be about 40 or 42 years old. From this point I ran with the clossing line in the said grant to Robert Morris, allowing 3 deg. variation, S. 3 W., crossing the middle fork of W'ms river, Cranberry and Cherry rivers, 5,150 p's to M, a large white-oak log and sugar stump in the edge of a bottom on the Dry fork of Spring creek, in the county of Greenbrier, which is the beginning corner of said Robert Morris grant and described in said grant as being a corner to Adam Eghole.
This point was shown to me by Joseph McMillion (who
724 now owns the said Eghole land) as being his corner. There
is also a maple marked at this point, which I blocked and ascertained the marks to be about 36 years old. From this point I

ran S. 6 E. 38 p's to N, crossing a branch, to a large locust stump, which is very much decayed and does not show any marks; which stump is claimed by said McMillion as his corner.

There are 10 deg. variation on this line and 2 p's longer than called for in the grant. From this point I ran S. 20 W. 32 p's to "O," a large poplar, which shows indications of old marks, but I am not positive that they are axe-marks. It has also been marked recently. There are 5 deg. variation on this line and 2 p's longer than called for in the grant; which tree is also claimed by said McMillion as his corner. I then ran S. 12 E. 82 p's to "P." At this place a hickory and walnut are called for in the grant, which I could not find. This point was shown to me by said McMillion as being the point where the hickory and walnut corner of his land formerly stood. There are 4 deg. variation on this line and 12 p's shorter than called for in the grant. From this point I ran S. 122 p's to "Q," a sugar stump and 2 sugar trees standing on a point near above a small branch, which trees are claimed by said McMillion as his corner. There are 6 deg. variation on this line and 4 p's shorter than called for in the grant. These trees are plainly marked on four sides. At this point the grant calls for three sugar trees, corner to said Eghole and also corner to George Clendennen and John Beckley. I blocked one of the marks which suited the calls of said Eghole land, which block is marked "M" and herewith filed. I also blocked one of the marks which suited the calls of said Clendennen & Beckley, which block is marked "B" and herewith filed.

725 Oct. 26th, 1883.—By request of Edward R. Wood, one of the defendants in this cause, I began at "F," where the black oak is called for in the said grant to Holmes, Gale, & Harness on the bank of Gauley rivers and by the call, of the survey upon which said grant is issued I ran N. 57 W., crossing Sand run 8 p's above its mouth at 76 p's, in all 116 p's, to "*bb*," a stone and 4 small birch saplings, which have been recently marked, standing on a small ridge. I allowed 3 deg. variation on this line. This point is claimed by the defendant as being where a birch tree formerly stood and described in a survey made on the 23rd day of April, 1795, for Wm. McCleary for 100,000 acres, and upon which survey a grant issued to Wm. McCleary on 21st day January, 1796, for the same as being situated or standing on a small rise about 40 p's from the mouth of a large run that puts into Gauley river about 2¾ miles from Fork lick, and also described in said survey as being a corner to said Holmes, Gale, & Harness. From this point I ran with the call of said grant to Holmes, Gale, & Harness, allowing 3 deg. variation, S. 38 W., crossing Gauley river five times, 1,340 poles to the north bank of Williams river, which point is marked by the figure 3 on the map, which was all that was required by the defendant.

Nov. 5th, 1883.—By request of the plaintiffs I began at E, where a red oak is called for, and ran by the calls of said report made by Bernerd Mollohan, allowing 3 deg. variation, S. 21 E. 800 p's, crossing Gauley river, to "F F." A red oak is called for at this point, which I could not find. There is red-oak timber near this point. I then

ran with the next call S. 66 E. 900 poles to figure 4, on Turkey creek. I then ran down Turkey creek N. 75 E. 80 poles to the forks of the same, N. 12 E. 360 poles, N. 5 E. 106 p's to the mouth of said creek.

726 May 7th, 1884.—By request of the plaintiffs I began at "R," a sugar and chestnut on the said old county line, which point is claimed by the plaintiffs as being where a post is called for in a grant from the Commonwealth of Virginia to Abner Cloud on the 10th day of March, 1790; said trees are marked on 4 sides, which marks appear to be about 40 years old. From this point I ran the last call in said grant, allowing 3 deg. variation, N. 38 E. 800 p's to "11." A sugar and elkwood are called for at this point which I could not find. I then ran with the first call in said grant, allowing 3 deg. variation, S. 52 E., crossing Gauley river and designated on the map as No. 6 in a draft of surveys made by Henry Banks on the 5th day of July, 1787, and to suit the calls of a grant from the Commonwealth of Virginia for 1,500 acres to Wm. G. Payne, assignee of Henry Banks, granted on the 17th day of November, 1802, which is designated on the map as No. 4; the marks on said tree appear to have been made with a pocket-knife and do not extend through the bark; there are also some old blazes on this tree which do not extend through the bark; there is also a beech standing at this place which is marked plainly with an axe on the sides bearing N. 24 W. and S. 24 E., which marks appear to be 30 or 40 years old. From this point I ran with the first call in said grant to Holmes, Gale, & Harness, allowing 3 deg. variation, S. 69 W. 1,200 p's to "*ee*." A red oak is called for at this point which I could not find. I then ran with the next call in said grant S. 7 W. 174 poles to "*ff*," on the bank of Gauley river, where a black oak is called for which I could not find. I then began at "G," a birch stump standing on the south bank of Sand run, a branch running into Gauley river about three miles from Fork lick, 48 p's from the mouth of said run, and, reversing the calls of said grant, I ran S. 37 E. 116 p's to "F," where the black oak is called for on bank of Gauley river, which point is 4 poles below a chestnut, lynn, ash, and

727 birch, which have been recently marked.

From this point I reversed the preceeding call in said grant and ran N. 7 E. 234 p's to "E," which point was shown to me by Bernard Mollohan, surveyor of lands for Webster county, as being where a red oak formerly stood and described as the beginning corner in a report made by him on the — day of ——, 18—, to recorder of Webster county for the benefit of Benjamin Rich, of a survey of 58,500 acres surveyed for Henry Banks in the year 1787. I found several line trees on this line marked to suit the calls of the said grant to Holmes, Gale, & Harness, which marks are very old. I found a variation of 3 deg. and the line 10 po. longer than called for. I also find from calculations that the course and distance from "D to E" is S. 73 W. 1,240 p's. This red-oak corner is also called for in a grant from the Commonwealth of Virginia to Wm. McClary for 100,000 acres granted on the 21st day of January, 1796. I then began at "G" and ran with the call of twice 1,000 poles to "22." At this

point a sugar is called for, which I could not find. The distance gave out on top of a ridge. This point is also claimed by the plaintiffs as being a corner to a survey of 500 acres granted to Austin Hollister on the 3rd day of March, 1849, and also a corner of a survey of 9,330 acres granted to said Hollister on the 1st day of November, 1855, which corner is described in said last-named grant as standing on a ridge.

I then ran with the calls of said grant of 9,330 acres, reversed, N. 39 E., crossing Turkey creek at 355 p's, in all 500 poles, to "33," a birch standing on the south bank of Gauley river, which tree is marked to suit the calls of/f said survey. There are 4 deg. variation on this line and distance same as called for. I found old line trees on this line. From this point I ran N. 83 E., crossing Gauley river, 420 p's to "44," a white-oak stump, shown to me by David Baughman as being the point where a white oak, beech, and lynn
728 formerly stood, a corner to the Wm. T. Hamrick land, now owned by said Baughman. There are 3 deg. variation on this line and 10 poles shorter than called for. I then ran S. 53 E., crossing Gauley river at 120 p's, 225 po., following a marked line, to "55." At this point a stake is called for in said grant. There are 2 deg. variation on this line; distance same as called for.

This point is also claimed by the plaintiffs as being on a line of a survey of 2,738 acres, granted to Douglas B. Layne and Alexander C. Layne on the 1st day of September, 1851. I then ran S. 2 W. 145 p's to "66," two sugars by a cliff of rocks, which trees are marked to suit the calls of said last-named grant.

There are 2 deg. variation on this line and 5 p's shorter than called for. I ran S. 39 E. 240 p's to "77," a maple on a ridge, which tree is marked to suit the calls of the last-named grant. There is 1 deg. variation and 8 p's longer than called for. I then ran N. 46 E. 80 p's to "88," a beech and maple marked to suit the calls of said last-named grant. There is 1 deg. variation on this line; distance same as called for. I then ran S. 1 W. 86 p's to "99," two birches marked to suit the calls of the said last-named grant. At this point two birches and beech are called for. There is 1 deg. variation on this line; distance same as called for. I then ran S. 39 E. 28 p's to "10, 10." At this point I found a spruce pine marked with three hacks on the side, bearing S. 35 W. There is 1 deg. variation on this line; distance same as called for. From this point I ran with the first call, reversed, of said grant of 9,330 acres S. 38 W., following a marked line, passing 4 beeches marked as corner trees at 610 p's. I crossed Williams river at 1,174 p's—in all, 1,422 p's—to "L," a birch and two spruce pines on the said old county line, which trees are marked to suit the calls of said grant.
729 There are 3 deg. variation on this line and 2 p's shorter than called for. I then began at the figure "3" on the north bank of Williams river and continued the line of the said grant to Wm. McCleary S. 38 W. 1,750 p's to "X." I then ran north 52 W. 108 p's to Wm. Belcher's house, the place marked thus "*," which was all that was required by the plaintiffs; all of which measurements were made by surface measure.

From all the papers in my possession it appears that 68,953 acres of the lands now claimed by the plaintiffs are covered by the various claims of defendants, and 23,987 acres which were conveyed by A. T. Caperton in his lifetime are also covered by said defendants' claims.

Q. 5th. Will you be kind enough to give further explanation of the plat of your work here filed, showing the ownership of others than the plaintiffs' and defendants', included within the boundaries of the conflicting claims?

A. The lands represented by the red letters ("—") "K L S Y" and following the red lines back to "K" are claimed by the plaintiffs under a deed made by John Williams and wife to A. T.
77,104 Caperton on the 20th day of February, 1850, for 77,104 acres.

The lands included in the red lines and numbered from 1 to 10 and the tract containing respectively 693 acres, 1,703 acres, and 440 acres, all adjoining each other, and the tract containing 5,000 acres, lying on and north of the old Harrison county line, are claimed by the plaintiffs under a deed made by John Williams and wife to A. T. Caperton on the 21st day of February, 1850.

9,330 The land-included in the red lines containing respectively
5,938 9,330 acres, 5,938 acres, and 350 acres, lying on and north of
350 the old Harrison county line, are claimed by the plaintiffs under a deed made by Austin Hollister and wife to A. T.
730 Caperton on the 12th day of February, 1859.

The tract included in the red lines marked 2,738 acres is
2,738 claimed by the plaintiffs under a deed made by D. B. Layne and wife to A. T. Caperton on the 12th day of April, 1859.

The tract lying inside of the 77,104 acres and shaded
11,459 yellow and marked 11,459 acres is part of the land conveyed by Wm. H. McFarland and wife and A. T. Caperton and wife to the Chesapeake & Ohio Railroad Company on the 11th day of October, 1869.

The boundary lying south of Cranberry river shaded in
23,987 blue and marked 23,987 represents the lands conveyed by A. T. Caperton in his lifetime to various parties.

The reservation mentioned in the deed from John Williams and wife to A. T. Caperton for the 77,104 acres *are* rep-
R's'v'tion. resented by the blue lines and numbered from 1 to 16, respectively.

The boundary represented by the purple lines and marked "A A," "B B," "C C," "D D," "E E," "F F," "T
100,000 T," and "S S" is the boundary of a survey of 100,000 acres granted to Wm. McCleary on the 21st day of January, 1796, as claimed by the plaintiffs.

And the boundar*ies* represented by the dotted lines marked with the letters "F," "*b b*," "*t t*," "*s s*," to "D D," "E E," "F F," and "T T" is the boundary of the said survey granted to Wm. McCleary, as claimed by the defendants.

The purple lines marked "T T," "F F," "L L," "O O," "P P,"

and "N N" represents a survey made for Henry Banks in
58,500 the year 1787 of 58,500 acres in lots or surveys from 1 to 53, as shown in the map.

The green lines marked by the figures 1, 2, 3, 4, 5, 6, 7 represents a survey of 12,500 acres made for George Messingbird on the 11th day of May, 1795, and the green lines marked with the figures
105,000 1, 8, 11, and 12 represent part of a survey of 105,000 acres made for James Welch on the 1st day of June, 1795.

The two last-named surveys were laid down by protraction by request of the plaintiffs.

731 The hour of 8 o'clock p. m. having arrived, the further taking of these depositions is adjourned until to-morrow morning at 8 o'clock *p.* m. at the same place.

B. C. CONRAD,
Notary Public.

APRIL 22ND, 1885—8 o'clock a. m.

The further taking of these depositions is resumed, pursuant to adjournment on yesterday, at the place and within the hours specified in notice and caption to these depositions annexed, and examination of BROWN M. YEAGER resumed.

Present: Col. B. W. Byrne, of counsel for plaintiffs.

Q. 6th. You state in running several of the lines there was a variation of 3 deg. Will you explain how you ran the lines of what you call the McClary tract from the letters "*b b*," which you say is the beginning corner of the McClary tract, and what you mean by the variation on that line?

A. In running the line of the McClary survey of 100,000 acres I ran 3 deg. to the right of the call given in the grant; the call of the grant was south 35 west. I ran south 38 west.

Q. 7th. Why did you run 3 deg. to the right?

A. In running the lines of other surveys made in the same vicinity and of about the same date I found the variation to be about 3 deg. from the original calls of the surveys and always to the right; that is the reason why I ran this line at a variation of 3 deg.

Q. 8th. How far did you run that line from "*b b*," the beginning corner of the McClary survey, which you say you ran S. 38 west?

A. I ran from "*b b*" a distance of 3,090 poles to the point "X" on said line, from which point I offset at right angles to the
732 right N. 52 W. 108 poles to Wm. Belcher's house, which point is marked thus on the map: ∗.

Q. 9th. Please state whether or not Wm. Belcher lives in the McClary survey.

A. He does not live inside of the lines of the McClary survey of 100,000 acres.

Further this deponent saith not.

B. M. YEAGER.

(Exhibit "X Y," referred to in the foregoing deposition, is a map and will be found at the end of this record.—L. B. Dellicker, cl'k.)

The further taking of these depositions is adjourned and continued until to-morrow morning, April 23rd, 1885, at the same place and within the same hours.

B. C. CONRAD,
Notary Public.

APRIL 23RD, 1885.

The taking of these depositions is resumed, pursuant to adjournment on yesterday, at the same place and between the same hours. Present: Col. B. W. Byrne, att'y for plaintiffs.

R. C. CLEVINGER, a witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

Q. 1st. Please state your age, place of residence, and your occupation.

A. I was 40 years of age last November; reside on Williams river, in Webster county, W. Va.; am a farmer by occupation.

Q. 2nd. State if you are acquainted with Mark Hammons; and, if so, where he resides and where he resided in 1875 and in 1876.

733 A. I have been acquainted with him about nine years. I understand that he lives on the Valley river, in Randolph county. I don't know where he resided in the year 1875. I think he lived on Elk river, just above the court-house in Webster county, in 1876.

Q. 3rd. State whether or not you know a man by the name of M. J. Stiltner; and, if so, how long have you known him and where did he live in 1876.

A. Yes, sir. I have known him for a great many years; ever since I was a boy. In 1876 he lived at the forks of Williams river, on the Allen T. Caperton lease that he got from Mark Hammons.

Q. 4th. State where you lived in 1876.

A. In 1876 I lived on the Allen T. Caperton lease got from Mark Hammons by M. J. Stiltner, at the forks of Williams river.

Q. 5th. Under what authority did you live on the Allen T. Caperton lease made to Mark Hammons?

A. On the 21st of September, 1876, M. J. Stiltner assigned to me one-half of the A. T. Caperton lease that he had bought from Mark Hammons. I had been living on the lease from December before, with the understanding that I was to have one-half of it. The paper here shown to me in the form of a lease from A. T. Caperton, by George M. Sawyers, his agent, to Mark Hammons, is the contract of lease, part of which was assigned to me by M. J. Stiltner, which paper, marked "A," I desire to have filed as part of my deposition.

This is the lease "A" of A. T. Caperton's to Mark Hammons, filed with the deposition of R. C. Clevinger this 23rd day of April, 1885.

B. C. CONRAD,
Notary Public.

This day I, George M. Sawyers, of the county of Webster, acting as agent for Allen T. Caperton, of Monroe county, all of the
734 State of West Virginia, has, for the sum of one dollar in hand paid and other valuable considerations, leased and rented for the said Caperton to Mark Hammons all that certain tract or parcel of land owned by said Caperton at and around the forks of Williams river, being the same land that William Millius formerly resided on, under the said Caperton, for the term of three years from this date, and the said Mark Hammons is to return the possession of the said land peaceably and quiet- to said Caperton whenever called on.

Given under our hands this 8th day of July, 1874.

A. T. CAPERTON,
By GEORGE M. SAWYER, *Ag't.*
his
MARK x HAMMONS.
mark.

Witnesses:
B. MOLLOHAN.
G. W. WOLVERTON.

On back:

A. T. Caperton's lease, by George M. Sawyer, on Williams river to Mark Hammons.

I, Mark Hammons, do hereby assign the within lease to M. J. Stiltner.

Witness my hand this 14th day of May, 1875.

MARK HAMMONS.

I, M. J. Stiltner, do assign one-half of the within lease to R. C. Clevinger this September the 21st, 1876.

——— ———.

735 Q. 6th. How long did you remain on the land under the A. T. Caperton lease assigned to you by M. J. Stiltner?

A. I remained there from December, 1875, to March, 1877. Then I moved off of the land.

Q. 7th. Who next occupied the land referred to?

A. When I left I left it all in the care of J. M. Stiltner, who sold the lease to Peter Hammons. I was not present at the sale, but J. M. Stiltner told me he had sold it to Peter Hammons, and Peter Hammons told me he had bought it of said Stiltner. I know that when M. J. Stiltner left the land that Peter Hammons took possession of it.

Q. 8th. How long did Peter Hammons remain in possession?

A. Peter Hammons was in possession of it a year or so. He then let Jesse Hammons have possession of the land. I think Jesse Hammons traded him another possession or lease for the A. T. Caperton lease, and then Jesse Hammons moved on the land. Then Jesse Hammons sold the possession of the same land to John Lee, and then John Lee moved on it.

Q. 9th. How long did John Lee then remain on the land?

A. He went there some time in the winter and raised a crop that season and the next season, and then sold all of his possession there to Jesse Hammons and left, I think, some time in August, before his crops got ripe. Jesse Hammons then took possession of it; took care of the crop. He then sold Peter Hammons a part of the possession, and Peter Hammons moved upon it and has resided on it ever since and still resides there, and Jesse Hammons still retains the possession of that portion of it that he did not sell to Peter Hammons and cuts and takes care of the grass on it.

Q. 10th. How do you know this property at the forks of Williams river has been transferred by the various parties one to another, as you have stated above?

736 A. I know it because all of the parties have told me so, and the contracts which they had made with each other.

And further this deponent saith not.

his
R. C. x CLEVENGER.
mark.

The taking of the deposition of C. W. BENEDUM, witness introduced on a former day, is this day resumed:

Q. 3rd. In answer to my first question, you stated that you were clerk of the county court of Webster county, and as such were custodian of the land books in which lands are charged for taxation, and that you have charge of the delinquent lists of lands returned delinquent and of sales of delinquent lands by the sheriff, and of sales by the sheriff of such lands, and the names of purchasers under such sales and the record of sheriff's reports of sales. Will you please state the different tracts and the number of acres in each purchased at any of the sheriff's sales in Webster county and in what years, and the dates of said sales and purchases made by Benjamin Rich, Albert Owen, G. P. Shreve, Thornton Conrow, and Conrad, Miller & Dorr?

A. On the 24th day of September, 1869, there was a tract of land sold by the sheriff for delinquent taxes of 58,000 acres, charged with taxes in name of Henry Banks, and sold in his name, for the year 1868, and purchased at said sale by Albert Owen, G. P. Shreve, and B. Rich, which sale and purchase are shown by a copy of the sheriff's report of sales to individuals, is herewith filed, marked "A," and made part of this deposition. On the — of ——, 18—, the following memorandum was made on the sheriff's memorandum of sale, to wit:

737 "Transferred to G. P. Shreve, and the recorder will — the deed of my interest to him.—Albert Owen." This transfer was acknowledged before A. B. Clark, justice, on the 23rd day of September, 1870, but does not show in what county or State said acknowledgement was taken. There also appears on the same memorandum the following endorsement, to wit: "I hereby transfer and assign the within certificate to Benjamin Rich. G. P. Shreve. (L. S.)"

This assignment was acknowledged on the 28th day of September, 1870, before James Woodzell, recorder of Webster county.

There is no date appears on the record of the assignment of Albert Owen to G. P. Shreve or of G. P. Shreve to Benjamin Rich.

See Exhibit "X," filed with this deposition.

On the 28th day of September, 1870, James Woodzell, recorder of Webster county, made a deed to Benjamin Rich, assignee of Albert Owen and G. P. Shreve, for a tract of 58,500 acres of land.

Q. 4th. State whether there is any deed on record in your office for 58,500 acres?

A. I have examined the records in my office and I find no deed on record for 58,500 acres to either one of the said Albert Owen, G. P. Shreve, or Benjamin Rich.

On the 24th day of September, 1869, there was a tract of land of 12,500 acres sold by the sheriff in the name of George Messingburg for the taxes for the year 1868, and purchased by A. Owen, G. P. Shreve, and B. Rich, as shown by the sheriff's report of sales, marked "A" and filed as a part of this deposition; but, on the sheriff's memorandum and receipt found on record, it is stated that John L. Smith was the purchaser of said tract of 12,500 acres, and that the purchase-money was paid by John L. Smith.

738 John L. Smith, on the 27th day of September, 1869, transfer-ed and assigned to Albert Owen all his right, title, and interest in and to his said purchase."

On the same memorandum I find the following endorsement, to wit: "I hereby transfer the within to Benjamin Rich and authorize the recorder of Webster county to make the proper transfers upon the record books. Albert Owen;" which assignment was acknowledged before A. B. Clark, justice, of Upshur county, on the 23rd day of September, 1870.

G. P. Shreve assigned his interest to Benjamin Rich and Thornton Conrow, and on the 28th day of September, 1870, acknowledged the same before James Woodzell, recorder of Webster county, shown by the sheriff's memorandum and receipt and assignments thereon, marked "B" and filed as a part of this deposition.

On the 28th day of September, 1870, James Woodzell, recorder of Webster county, executed to Benjamin Rich and Thornton Conrow, assignees of Albert Owen and G. P. Shreve, a deed for the tract of 12,500 acres of land sold in the name of "George Messingbird" or "Messingburg."

Q. 5th. Please state whether or not this tract of 12,500 acres is now charged vith taxes in Webster county, and all that the books in your office show in reference to its taxation.

A. This tract of 12,500 acres was returned delinquent in the name of Benjamin Rich and others in the year 1881 and 1882 and sold by the sheriff in the month of November, 1883, for the taxes thereon for the years 1881 and 1882 and purchased by the sheriff for the State and dropped from the land books for the year 1884 and is still off.

On the 24th day of September, 1869, there was a tract of land of 100,000 acres sold by the sheriff of Webster county in the name of

Wm. McCary for the taxes for the year 1868 and purchased by Albert Owen and B. Rich, as shown by a copy of the sheriff's
739 report of sales, and marked "A" and filed as a part of this deposition. Benjamin Rich, on the 28th day of September, 1870, assigned one undivided one-half of said purchase to Thornton Conrow, of Philadelphia. The sheriff's memorandum of sale recites that the purchase money was paid by Benjamin Rich, and also shows that he was the purchaser of said tract. See copy of sheriff's memorandum and receipt and assignment thereon, herewith filed and made part of this deposition and marked "C."

There was a deed executed on the 28th day of September, 1870, by James Woodzell, recorder of Webster county, to Benjamin Rich and Thornton Conrow for this tract of 100,000 acres.

Q. 6th. State whether or not this tract of 100,000 acres has been omitted from the land books of Webster county for any year or years since 1868?

A. It does not appear to have been on the land books of Webster county for any year after 1868 in the name of McClary, and it appears for the first time on the land books of Webster county in the year 1871 in the name of Benjamin Rich, and there appears in the column of explanations, &c., the following memorandum: "Transferred from Fleury;" and in the year 1872 there appears to be a tract of 100,000 acres answering the same description, charged in the name of Benjamin Rich and others on the land books of Webster county, and this tract does not seem to have been omitted from the land books of Webster county for any year since 1871.

The further taking of these depositions are adjourned and continued until to-morrow morning, April 24th, 1885, at the same place and within the same hours.

B. C. CONRAD,
Notary Public.

740 APRIL 24TH, 1885.

The taking of these depositions is this day resumed, pursuant to adjournment of yesterday, at the same place and within the same hours specified in caption and notice attached.

Present: C. P. Dorr, atto. for plaintiffs, and the examination of C. W. BENEDUM is resumed, who deposeth as follows, to wit:

I have examined the land books of Webster county, and find no land charged thereon in the name of Flury or De Fleury, Viscount Clifford, on any of said land books, but the land books for the year 1870 are not verified by the assessor.

I find from the record of delinquent land sales made by the sheriff for Webster county on the 26th day of September, 1871, that said sheriff sold a tract of 100,000 acres in the name of De Fleury, Viscount Clifford, for the taxes delinquent for the year 1870, and at said sale purchased by B. Rich and T. Conrow. See copy of said sale list filed with this deposition, marked "D."

On the 3rd day of October, 1872, James Woodzell, recorder of the

county of Webster, conveyed by deed to Benjamin Rich and Thornton Conrow said tract of 100,000 acres of land.

On the 24th day of September, 1869, there was a tract of land of 105,000 acres sold by the sheriff of Webster county in the name of James Welch for the taxes thereon for the year 1868, and purchased by Albert Owen, as shown by a copy of the sheriff's sales, marked "A," and filed as part of this deposition. On the 25th day of September, 1869, Albert Owen assigned his said purchase to Benjamin Rich, and on the 28th day of September, 1870, Benjamin Rich assigned an undivided half of said purchase to Thornton Conrow.

On the 23rd day of September, 1870, Albert Owen acknowledged his said assignment before A. B. Clark, justice of Upshur county, and on the 28th day of September, 1870, Benjamin Rich
741 acknowledged his said assignment before James Woodzell, recorder of Webster county. See copy of sheriff's memorandum and assignments, filed herewith, marked "E." On the 28th day of September, 1870, James Woodzell, recorder of the county of Webster, conveyed said tract — 105,000 acres by deed to Benjamin Rich and Thornton Conrow, assignees of Albert Owen.

On the 3rd day of May, 1872, Benjamin Rich and Thornton Conrow conveyed by deed to Ferdinand F. Sharp one undivided third part of three several tracts of land containing respectively 100,000, 105,000, and 12,500 acres.

On the 15th day of May, 1872, Ferdinand F. Sharp conveyed by deed to Walter Wood, trustee for Richard, Edward R., George, and Randolph Wood, and also for himself, an equal undivided portion—one-sixth interest in each of said three several tracts of 100,000, 105,000, and 12,500 acres.

Q. 7th. State whether or not this tract of 105,000 acres has been entered on the land books of Webster county; and, if so, for what years.

A. This tract of 105,000 acres was on the land books of Webster county first in the year 1868, and charged in the name of James Welch with taxes for the years 1868, 1869, and 1870; in 1871 it is charged on the land books in the name of Benjamin Rich, and for the year 1872 it is charged in the name of Benjamin Rich and others, and in 1873 it is also charged in the name of Benjamin Rich and others.

In the year 1874 it is charged as 65,734 acres in the name of Francis Hyland, and in the column of explanations, &c., is the folfollowing memorandum: "Heretofore charged 105,000 acres to B. Rich. See copy from the assessor's land books filed as part of this deposition and marked "F."

742 The said tract of 105,000 acres is not charged or entered on the land books of Webster county after the year 1873. In the year 1875 a tract of 65,734 acres is charged in the name of Francis Hyland. In 1876 it is also charged to said Francis Hyland. In 1877 the said tract is charged in the name of B. Rich and others. In the column of explanations, &c., entered on the land books is the following memorandum: "Transferred from Francis Hyland by clerk county court," and said tract is charged on the land

books in the name of said B. Rich for the years 1878, 1879, and 1880.

In 1881 it was charged in the name of Stuart Wood; also so charged for the years 1882, 1883, and 1884.

On the 5th day of October, 1875, the sheriff of Webster county sold a tract of 65,734 acres in the name of Thomas Hyland for the delinquent taxes for the year 1874, and was purchased by B. Rich, as is shown by a copy of the sheriff's report of sales herewith filed and marked "G" as part of this deposition.

On the 23rd day of October, 1876, Benjamin Rich assigned one undivided one-third of a memorandum of purchase to Thornton Conrow and one undivided one-third interest thereof to Walter Wood. Said assignments were duly acknowledged by said Rich on the 23rd day of October, 1876, before George M. Sawyers, clerk of the county court of Webster county, W. Va.

But it appears by the Exhibit "G" that no such tract was sold in the name of Francis Hyland. See copy of sheriff's memorandum and receipt here filed as part of this deposition, marked "H."

On October the 30th, 1873, G. M. Sawyers, clerk of the county court of Webster county, conveyed by deed to Benjamin Rich and Thornton Conrow and Walter Wood a tract of 65,734 acres.

On the 25th day of November, 1879, the sheriff of Webster county sold a tract of 65,734 acres of land for delinquent taxes for the years 1875 and 1876 charged in the name of Francis
743 Hyland, at which sale said tract was purchased by Conrad, Miller, and Dorr. See copy of sheriff's report of sales filed with this deposition, marked "I."

On the 8th day of November, 1880, said C. P. Dorr, J. A. J. Miller, and B. P. Conrad assigned their said purchase to Stuart Wood, as appears by endorsement on the sheriff's memorandum and receipt.

C. P. Dorr and J. A. J. Miller on the said 8th day of November, 1880, acknowledged their said assignment before Walter Hollister, notary public for Webster county, and on the 17th day of November, 1880, said B. P. Conrad acknowledged his said assignment before Walter Hommister, notary public of Webster county. See copy sheriff's memorandum and receipt filed herewith and made part of this deposition, marked "J."

On the 12th day of May, 1881, B. C. Conrad, clerk of the county court of Webster county, and also as commissioner appointed by said circuit court for the purpose, conveyed said 65,734 acres of land by deed to Stuart Wood.

Further this deponent saith not.

C. W. BENEDUM.

Exhibit "A," referred to in the deposition of C. W. Benedum, is the same paper filed with the second amended and supplemental bill in this cause, marked "Exhibit No. 44," "Exhibit No. 45," and will be found on page 333 and following pages.

Exhibit "X," referred to in the deposition of C. W. Benedum, is in the words and figures following, to wit:

James Woodzell, Recorder, &c., to Benjamin Rich. } Deed for 58,500 Acres.

Memorandum of real estate within the county of Webster sold this 24th day of September, 1869, for the non-payment of taxes
744 thereon for the year 1868.

Name of person charged with taxes, Henry Banks; quantity of land charged, 58,500; local description, Elk and Gauley; quantity of land sold, 58,500; amount of taxes, $10.95; name of purchaser, Albert Owen, G. P. Shreve, and Benjamin Rich; amount of money, $11.20.

Received of Albert Owen, G. P. Shreve, and Benjamin Rich the above sum of eleven dollars and twenty cents, it being the amount of purchase-money for the land mentioned in the above memorandum.

C. McDODRILL, *Sheriff.*

Transferred to G. P. Shreve, and the recorder will — the deed of my interest to him.

ALBERT OWEN.

This day personally appeared before me, A. B. Clark, justice for the township of Buckhannon, in said county, Albert Owen, whose name appears above to the foregoing transfer to G. P. Shreve, and acknowledged the said transfer to be his act and deed for the purposes therein named or mentioned.

Given under my hand this 23rd day of Sept., 1870.

A. B. CLARK, *Justice.*

I hereby transfer and assign the within certificate to Benjamin Rich.

G. P. SHREVE. [L. S.]

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, James Woodzell, recorder of said county, do certify that Granville P. Shreve, whose name appears above, has this day acknowledged the above transfer to be his act and deed.

Given under my hand this 28th day of Sept., 1870.

JAMES WOODZELL, *Recorder.*

Albert Owen, G. P. Shreve, and Benjamin Rich this day paid to me, James Woodzell, recorder of Webster county, the sum of
745 thirty-one dollars, the amount of county taxes on a tract of land in Webster county charged to Henry Banks as 58,500 acres on Elk and Gauley —, for the year 1868, with interest, which I, the said recorder, certify this 24th day of Sept., 1869.

JAMES WOODZELL, *Recorder.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Charles W. Benedum, clerk of the county court of said county, do hereby certify that the foregoing is a true copy from the record in my office.

Given under my hand this 22nd day of April, 1885.

C. W. BENEDUM, *Clerk.*

Exhibit "B," referred to in the deposition of C. W. Benedum, is in the words and figures following, to wit:

James Woodzell, Recorder of Webster County, to Benjamin Rich and Thornton Conrow. } Deed for 12,500 Acres.

Memorandum of real estate within the county of Webster sold this 24th day of September, 1869, for the non-payment of taxes thereon for the year —.

Name of person charged with taxes, George Messingburg; quantity of land charged, 12,500; local description, ——; quantity of land sold, 12,500; amount of taxes due, $2.36; name of purchaser, John L. Smith; amount of purchase-money, $2.61.

Received of John L. Smith the above sum of two dollars and sixty-one cents, it being the amount of purchase-money for the land mentioned in the above memorandum.

C. McDODRILL, *S., W. C.*

Know all men that I, John L. Smith, hereby sell, transfer,
746 and assign to Albert Owen all my right, title, and interest in and to the within certificate and authorize the recorder of Webster county to make the proper entry and transfers upon the books of the county records.

Witness my hand and seal this 27th September, 1869.

JOHN L. SMITH. [SEAL.]

I hereby transfer the within to Benjamin Rich, and authorize the recorder of Webster county to make the proper transfers upon the record books.

ALBERT OWEN.

STATE OF WEST VIRGINIA, *County of Upshur.* }

This 23rd day of September, A. D. 1870, personally appeared before me in my office Albert Owen, whose name is subscribed to the foregoing assignment, and acknowledged before me the assignment to be his act and deed for the purposes therein mentioned.

A. B. CLARK, *Justice.*

I hereby transfer and assign the within certificate to Benj. Rich and Thornton Conrow.

G. P. SHREVE. [SEAL.]

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, James Woodzell, recorder of Webster county, do certify that G. P. Shreve, whose name is signed to the foregoing writing, bearing date 25th day of Sept., 1870, has acknowledged the same before me in my office.

Given under my hand this 28th day Sept., 1870.

JAMES WOODZELL, *Recorder.*

747 Benjamin Rich this day paid to me, James Woodzell, recorder of Webster county, the sum of six dollars and fifty-six cents, the amount of county taxes on a tract of land in Webster county charged to George Messingburg as 12,500 acres, with interest, which I, the said recorder, certify this 28th day of Sept., 1870.

JAMES WOODZELL.

Exhibit "C," referred to by C. W. Benedum in his deposition, is in words and figures following, to wit:

James Woodzell, Recorder of Webster County, to Benjamin Rich and Thornton Conrow. } Deed for 100,000 Acres.

Memorandum of real estate within the county of Webster sold the 24th day of September, 1869, for the non-payment of taxes thereon for the year 1868.

Name of person charged with taxes, Wm. McClary; quantity of land sold, 100,000 acres; local description, —; amount of taxes due, $41.58; name of purchaser, Benjamin Rich; amount of purchase-money, $41.83.

Received of Benjamin Rich the above sum of $41.83, it being the amount of purchase-money for the land mentioned in the above memorandum.

C. McDODRILL, *Sheriff.*

Benjamin Rich this day paid to me, James Woodzell, recorder of Webster county, the amount of 106 dollars and 11 cents, the amount of county taxes on a tract of land in Webster county charged to William McClary as 100,000 acres for the year 1868, with interest, which I, the said recorder, certify this 24th day of September, 1869.

JAMES WOODZELL, *Recorder.*

I hereby sell, transfer, and assign one undivided one-half of the within certificate to Thornton Conrow, of Philadelphia.

BENJAMIN RICH. [SEAL.]

Sept. 28th, 1870.

748 STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, James Woodzell, recorder of said county, do certify that Benjamin Rich, whose name is signed to the foregoing writing, bearing date the 28th day of September, 1870, has acknowledged the same before me in my said office.

Given under my hand this 28th day of September, 1870.

J. WOODZELL, *Recorder.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Charles W. Benedum, clerk of the county court of said county, do certify that the foregoing is a true copy from the records in my office.

Given under my hand this 22nd day of April, 1885.

C. W. BENEDUM, *Clerk.*

Exhibit "D," referred to in the deposition of C. W. Benedum, is the same paper filed and marked Exhibit "I" on page 372 and following pages of this record.

Exhibit "E," referred to in the deposition of C. W. Benedum, is in the words and figures following, to wit:

James Woodzell, Recorder of Webster County, to Benjamin Rich and Thornton Conrow. } Deed for 105,000 Acres.

Memorandum of real estate within the county of Webster sold this 24th day of September, 1869, for the non-payment of taxes thereon for the year 1868.

Name of person charged with taxes, James Welch; quantity of land charged, 105,000; local description, —; quantity of land sold, 105,000 acres; amount of taxes due, $21.72; name of purchaser, Albert Owen; amount of purchase-money, $21.97.

Received of Albert Owen the above sum of twenty-one dol-
749 lars and ninety-five cents, it being the amount of purchase-money for the land mentioned in the above memorandum.

C. McDODRILL, *Sheriff.*

Albert Owen this day paid to me, James Woodzell, recorder of Webster county, the sum of sixty dollars and seventy-three cents, the amount of county taxes on a tract of land in Webster county charged to James Welch as 105,000 acres for the year 1868, with interest, which I, the said recorder, certify this 24th day of September, 1869.

JAMES WOODZELL, *Recorder.* [SEAL.]

I hereby sell, transfer, and assign all my interest in and to the within certificate to Benjamin Rich, and authorize the recorder of Webster county to execute a deed to the said Rich instead of me.

Witness my hand and seal this the 25th day of September, 1869.

ALBERT OWEN. [SEAL.]

748 STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, James Woodzell, recorder of said county, do certify that Benjamin Rich, whose name is signed to the foregoing writing, bearing date the 28th day of September, 1870, has acknowledged the same before me in my said office.

Given under my hand this 28th day of September, 1870.

J. WOODZELL, *Recorder.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Charles W. Benedum, clerk of the county court of said county, do certify that the foregoing is a true copy from the records in my office.

Given under my hand this 22nd day of April, 1885.

C. W. BENEDUM, *Clerk.*

Exhibit "D," referred to in the deposition of C. W. Benedum, is the same paper filed and marked Exhibit "I" on page 372 and following pages of this record.

Exhibit "E," referred to in the deposition of C. W. Benedum, is in the words and figures following, to wit:

James Woodzell, Recorder of Webster County, to Benjamin Rich and Thornton Conrow. } Deed for 105,000 Acres.

Memorandum of real estate within the county of Webster sold this 24th day of September, 1869, for the non-payment of taxes thereon for the year 1868.

Name of person charged with taxes, James Welch; quantity of land charged, 105,000; local description, —; quantity of land sold, 105,000 acres; amount of taxes due, $21.72; name of purchaser, Albert Owen; amount of purchase-money, $21.97.

Received of Albert Owen the above sum of twenty-one dol-
749 lars and ninety-five cents, it being the amount of purchase-money for the land mentioned in the above memorandum.

C. McDODRILL, *Sheriff.*

Albert Owen this day paid to me, James Woodzell, recorder of Webster county, the sum of sixty dollars and seventy-three cents, the amount of county taxes on a tract of land in Webster county charged to James Welch as 105,000 acres for the year 1868, with interest, which I, the said recorder, certify this 24th day of September, 1869.

JAMES WOODZELL, *Recorder.* [SEAL.]

I hereby sell, transfer, and assign all my interest in and to the within certificate to Benjamin Rich, and authorize the recorder of Webster county to execute a deed to the said Rich instead of me.

Witness my hand and seal this the 25th day of September, 1869.

ALBERT OWEN. [SEAL.]

STATE OF WEST VIRGINIA, } *To wit:*
County of Upshur, }

On this the 23rd day of September, 1870, personally appeared before me, A. B. Clark, justice of Buckhannon township, in the said county, Albert Owen, whose name appears above to the foregoing assignment *assignment* to Benjamin Rich, and acknowledged to be his act and deed for the purposes therein mentioned.

Given under my hand this the 23rd day of September, 1870.

A. B. CLARK, *Justice.*

I hereby transfer and assign one undivided half of the within certificate to Thornton Conrow, of Phila.

BENJAMIN RICH. [SEAL.]

September 28th, 1870.

STATE OF WEST VIRGINIA, } *To wit:*
Webster County, }

I, James Woodzell, recorder of Webster county, do certify
750 that Benjamin Rich, whose name is signed to the above writing, bearing date the 28th of September, 1870, has acknowledged the same before me in my county aforesaid.

Given under my hand this 28th day of September, 1870.

JAMES WOODZELL, *Recorder.*

STATE OF WEST VIRGINIA, } *To wit:*
Webster County, }

I, C. W. Benedum, clerk of the county court of Webster county, do hereby certify that the foregoing is a true copy of the records of my office.

Given under my hand this the 23rd day of April, 1885.

C. W. BENEDUM, *Clerk.*

Exhibit "F," referred to in the foregoing deposition of C. W. Benedum, is in the words and figures following, to wit:

(See table marked 751–754.)

755 Exhibit "H," referred to in the deposition of C. W. Benedum, is in the words and figures following, to wit:

Samuel Given, Sheriff, to Benj. Rich. } Memorandum and Receipt.

Memorandum of real estate within the county of Webster sold this 5th day of October, eighteen hundred and seventy-five, for the non-payment of taxes thereon for the year 1874.

Name of person charged with taxes, Francis Highland; quantity of land charged, 65,734 acres; estate held therein, fee; local description of land, Gauley and W'ms river; amount of tax due thereon

for State and school purposes, including interest, damages, and commissions for the — 1874, $23.63; amount of county tax due thereon, including same, 1874, $62.83; amount of township or district or independent school district tax due thereon for 1874, $43.33; quantity of land sold, 65,734 acres; name of purchaser, Benjamin Rich; amount of purchase-money paid, including interest, damages, commissions, and fee for receipt, $143 34 cents.

Received of Benjamin Rich the above sum of one hundred and forty-three dollars and 34 cents, it being the whole amount paid by him for the purchase of land mentioned in the above memorandum and the fee for this receipt.

SAMUEL GIVEN,
Sheriff of Webster County.

For value received, I hereby sell, assign, and set over unto Thornton Conrow, of Philadelphia, one undivided third part of the within-mentioned tract of land, and unto Walter Wood, his heirs or assigns, the undivided one-third part of all my right and title to the within receipt or mentioned tract of land.

Witness my hand and seal this 23rd day of October, 1876.

BENJAMIN RICH. [SEAL.]

STATE OF WEST VIRGINIA, } *To wit:*
Webster County, }

756

I, George M. Sawyers, clerk of the county court of the said county, do certify that Benjamin Rich, whose name is signed to the foregoing writing, bearing date on the 23rd day of October, 1876, has this day acknowledged the same before me in my said office.

Given under my hand this 23rd day of October, 1876.

G. M. SAWYERS, *Clerk.*

STATE OF WEST VIRGINIA, } *To wit:*
Webster County, }

I, Chas. W. Benedum, clerk of the county court of said county, do hereby certify that the foregoing is a true copy from the record in my office.

Given under my hand this 23rd day of April, 1885.

C. W. BENEDUM, *Clerk.*

Exhibit "I," referred to in the deposition of C. W. Benedum, is the same paper filed with the amended and supplemental bill, marked "Exhibit —," on page 366 and following pages of this record.

Exhibit "J," referred to in the deposition of B. M. Yeager, is in the words and figures following, to wit:

Memorandum of real estate within the county of Webster sold this 25th day of November, eighteen hundred and seventy-nine, for the non-payment of taxes thereon for the years 1875 and 1876.

Name of person charged with taxes, Francis Highland; quantity of land charged, 65,734; local description of land, Gauley and

Williams rivers; amount of tax due thereon for State and State-school purposes, including interest, damages, and costs, for the year 1875, $41.68; for the year 1876, $39.63; amount of county tax due thereon, including same, for the year 1875, $69.46; for the
757 year 1876, $66.05; amount of township, district, or independent school district tax due thereon, including same, for the year 1875, $112.28; for the year 1876, $198.15; quantity of land sold, 65,734 acres; name- of purchaser-, Conrad, Miller, & Dor r; amount of purchase-money paid, including interest, damages, commission, and fee for receipt, $595.92.

Received of Conrad, Miller, and Dorr the above sum of five hundred and ninety-five dollars and ninety-two cents, it being the whole amount paid by them for the purchase of land mentioned in the above memorandum and fee for receipt.

P. F. DUFFY,
Sheriff of Webster County, W. Va.

For value received, as well as in consideration of Stewart Wood having paid to us the sum of five hundred and ninety-five dollars and ninety-two cents, with interest thereon from the 25th day of November, 1879, at the rate of 12 per cent. per annum, we hereby transfer and assign to the said Stewart Wood the benefit of the within-named purchase.

Given under our hands and seals this 8th day of Nov., 1880.

C. P. DORR. [SEAL.]
J. A. J. MILLER. [SEAL.]
B. P. CONRAD. [SEAL.]

STATE OF WEST VA., *Webster County,* } *To wit:*

I, Walter Hollister, a notary public in and for said county, do hereby certify that J. A. J. Miller and C. P. Dorr, whose names are assigned to the above writing, dated November the 8th, 1880, personally appeared before me in my said county and acknowledged the same.

Given under my hand this the 8th day of November, 1880.

WALTER HOLLISTER,
Notary Public, Webster County.

758 STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, Walter Hollister, a notary public in and for the county aforesaid, do certify that B. P. Conrad, whose name is signed to the foregoing assignment, bearing date on the 8th day of November, 1880, has this day acknowledged the same before me in my said county.

Given under my hand this 17th day of November, 1880.

WALTER HOLLISTER,
Notary Public.

STATE OF WEST VIRGINIA:

WEBSTER COUNTY COURT, CLERK'S OFFICE.

I, Ballard P. Conrad, clerk of the county court of said county, do hereby certify that C. P. Dorr, J. A. J. Miller, and B. P. Conrad, whose names are signed to the annexed assignment, are the identical persons who purchased the 65,734 acres of land sold in the name of Francis Highland by the sheriff of Webster county on the 25th day of November, 1879, and recorded as being purchased by "Conrad, Miller, & Dorr."

Given under my hand this 17th day of November, 1880.

[COURT SEAL.] B. P. CONRAD.
Clerk Webster County Court.

WEST VIRGINIA:

CLERK'S OFFICE OF WEBSTER COUNTY COURT,
November 17th, 1880.

The foregoing memorandum, together with the assignment and certificates of acknowledgment thereof thereon, was this day admitted to record in this office.

Teste: B. P. CONRAD, *Clerk.*

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, C. W. Benedum, clerk of the county court of said county,
759 do hereby certify that the foregoing is a true copy from the record in my office.

Given under my hand this 23rd day of April, 1885.

C. W. BENEDUM, *Clerk.*

J. M. STILTNER, another witness of lawful age, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows, to wit:

Q. 1st. Please state your age, residence, and occupation.

A. I am 47 years old; reside in Webster county, W. Va.; am a farmer by occupation.

Q. 2nd. Please examine a paper filed with R. C. Clevinger's deposition, marked "A," and state if you are the M. J. Stiltner who purchased said lease from Mark Hammons on the 14th day of —, 1875.

A. I am the same J. M. Stiltner.

Q. 3rd. Please state how much you gave said Hammons for said lease, when you took possession of the land, how long you remained in possession, and to whom did you deliver the
760 possession.

A. I gave said Hammons $65.00 for said lease. I took possession, I think, about the 1st of August, 1875; I got full possession of it, but I got possession of a part in the spring of 1875. Hammons didn't move off until about the month of August.

On the 21st of September, 1876, I assigned one-half of said lease

to R. C. Clevinger and said Clevinger moved onto it and in the spring of 1877 he moved off, and I for myself and as an agent for him sold the said lease to Peter Hammons in the spring of 1877—a short time after R. C. Clevinger moved off. I moved off about the 17th day of April, 1877, and left Peter Hammons in possession.

Q. 4th. How much did Peter Hammons give you for said lease?

A. He gave me $25.00.

Q. 5th. Why was not the lease assigned to Peter Hammons?

A. He said he didn't want it assigned.

Q. 6th. Please state who got the possession from Peter Hammons.

A. I was at the same improvement afterwards and Jesse Hammons was living on it, and he said that he had got it of Peter Hammons, having swapped or traded another improvement above there to him for it.

Q. 7th. Please state who got the possession of Jesse Hammons.

A. John Lee was living on the land about three years ago. I was at his house, on the improvement, and he told me that he had purchased from Jesse Hammons. Since that I have not been there.

Further this deponent saith not.

M. J. STILTNER.

The further taking of these depositions is continued and adjourned until to-morrow morning, April 25th, 1885, at the same place and within the same hours specified in the caption and notice annexed thereto.

B. C. CONRAD,
Notary Public.

761 APRIL 25TH, 1885.

No witness appearing on this day at the time and place to which the same were adjourned, the further taking of these depositions *are* continued and adjourned until Monday, April the 27th, 1885, at the same place and within the hours specified in the caption and the annexed notice.

B. C. CONRAD,
Notary Public.

* * * *

MONDAY, *April 27th*, 1885.

No witness appearing on this day at the time and place to which the further taking of these depositions *were* adjourned on Saturday, the further taking thereof *are* continued and adjourned until to-morrow, April 28th, 1885, at the same place and within the hours specified in the caption and the annexed notice.

B. C. CONRAD,
Notary Public.

APRIL 28TH, 1885.

The taking of these depositions is resumed, pursuant to adjournment, at the place and within the hours specified in the caption and annexed notice.

SAMUEL HINKLE, a witness of lawful age, introduced on behalf of plaintiffs, after being first duly sworn to speak the truth, the whole truth, and nothing but truth, deposeth as follows, to wit:

Q. 1st. What is your age, residence, and occupation?

A. My age is 59 the 30th day of next May; reside in Webster county, and my occupation is farming.

Q. 2nd. In what district of Webster county and on whose land do you reside?

A. Glade district, and on Allen T. Caperton's land.

762 Q. 3rd. Did you or not ever have any personal acquaintance with the late Allen T. Caperton?

A. Yes, sir; I had acquaintance with him.

Q. 4th. Had you or not, at the time you went to live on the land of Allen T. Caperton, any permission or authority from any one to take possession of it; and, if so, from whom did your authority come?

A. I had authority from Allen T. Caperton himself.

Q. 5th. What, if anything, did said Caperton tell you concerning the possession of his land, and did he or not give you any instructions as to what you were to do on his land; and, if so, what were your instructions?

A. He gave me full possession of the whole of his land and told me to see that there was no destruction of timber, and to keep trespassers off of it.

Q. 6th. Did you or not at any time warn trespassers off of the land of said Caperton?

A. I did, at the Will's line or between the Will's line and the river, near the head of Buckeye; I mean by the Will's line the line next the Gauley river—of the Jyhugh Will's land of 2,200 acres, which was part of Caperton's land before he sold it to Capertons.

Q. 7th. If you can, please state when you first moved on said Caperton's land, and how long you have lived there.

A. In 1868, if I mistake not. It will be 17 years the first day of May next since I moved thereto.

Q. 8th. Please state whether or not you have lived at any other place or had any other home than the one you now occupy on said Caperton's land since the time you first moved there.

A. I have not. I have lived there ever since I first moved there, on no other land but Caperton's.

Q. 9th. If you can, please state the time when Allen T. Caperton died.

763 A. I can't state the time exactly. I remember of hearing of his death, but can't state the month or year.

Q. 10th. Since the death of Allen T. Caperton under whose authority, if any, have you been holding possession of said Caperton lands?

A. James S. Craig and Marshal Triplett, agents. I have a written authority from Triplett, which is here filed as part of my deposition, marked "T." James S. Craig, agent, after he was appointed over the land, continued my authority and control over all the

Caperton lands, and directed me to go as I had been and see to the lands.

Q. 11th. Have you or not at any time during your tenancy on the Caperton land surrendered your possession to any other person or acknowledged yourself the tenant of any other landlord than Allen T. Caperton, his heirs-at-law, or their agent?

A. I have not, and don't intend to.

Further this deponent saith not.

SAMUEL HINKEL.

The further taking of these depositions is adjourned until to-morrow, April the 29th, 1885, at the same place and within the same hours.

B. C. CONRAD,
Notary Public.

"T."

I, Marshal Triplett, as the agent of A. T. Caperton's heirs, this day authorize Mr. Samuel Hinkle — look after said land and show it to purchasers and — control of said land and see that no destruction or trespass is committed.

This 1st day of June, 1878.

M. TRIPLETT.

The above is the written authority from Marshal Triplett, ag't for Allen T. Caperton, referred to in deposition of Samuel Hinkel and filed therewith, marked "T."

B. C. CONRAD,
Notary Public.

764 WEDNESDAY, *April the 29th*, 1885.

The further taking of these depositions is resumed, pursuant to adjournment thereof on yesterday, at the place and within the hours specified in the caption and the annexed notice.

JAMES S. CRAIG, a witness of lawful age, after being first sworn to speak the truth, the whole truth, and nothing but truth, deposes as follows, to wit:

Q. 1st. What is you- age, residence, and occupation?

A. My age is about 40 years; I reside at Summersville, in Nicholas county, and my time is occupied principally with lands and the real-estate business.

Q. 2nd. Please state whether or not you have had and now have anything to do with the lands of the late Allen T. Caperton, located in Nicholas and Webster counties; and, if so, in what capacity.

A. I have up to this date had considerable to do with the lands of Mr. Caperton's estate in the counties named, acting in the relation of agent for the sale commissioners appointed by the court in the case in the circuit court of Monroe county of Caperton's adm'rs *vs.* Caperton's heirs and creditors, to make sale of said lands, and also as agent for the heirs-at-law of said Caperton.

Q. 3rd. At what time did you first take charge of the Caperton lands as agent?

A. I took charge of that part of said land then lying and included within the lines of Nicholas county on the 1st day of September, 1877 (the line between Nicholas and Webster counties has been changed within the past two years, throwing a much larger body of said land into Webster county than it formerly contained). I took charge as agent of the Caperton land in Webster county about November 27th, 1880, under special direction of Hon. James F. Patton, then one of the commissioners appointed by the circuit court of Monroe county to make sale of said land.

765 Q. 4th. How are the lands of which you took charge as agent identified on the map?

A. Said land consists of a number of contiguous tracts (shown on the map of Surveyor B. M. Yeager, filed with this deposition), included within and bounded by the small red lines, beginning in Nicholas with the block of surveys numbered from 1 to 10, the first nine of which contains 1,000 acres each, and No. 10 1,260 acres; the lot marked with the red number "693;" the John Staples grant, "1,703" in red, which is the number of acres it contains; the 400-acre grant joining the east lines of No. 10, laid down but not numbered or marked on said map; the 77,104 acres beginning with the corner at red "K," marked "poplar;" thence with the "old Harrison county line" to red "L," between the forks of Williams river; thence on with the red line to 23,787-acre reservation indicated by the blue-shaded lines, and with it across to black "S," near Cranberry river; thence on with the blue-shaded line to the north fork of Cherry, crossing on the red line to black "Y" at or near the junction and between the north and south forks of Cherry, thence crossing the north fork and down said Cherry river to the John Staples grant of 1,703 acres to a corner of same and the 153,900 acres near Gauley and not far from the mouth of Rock Camp creek, a north branch of Gauley; thence up Gauley with original lines of the Robert Morris grant of 153,900 acres, crossing Cranberry, and up the ridge on the north side of the river to the aforesaid 23,787-acre reservation; thence with same to small red "R R," thence on with said original lines — a general western direction to Gauley river and crossing it on a short line, thence up the river on the north side via red "H," "I," "J," back to the beginning at red "K." The lot shaded in yellow and marked in red, "11,459," is included within the boundaries last above given as part of the 77,104 acres, which is part of the grant to Robert Morris for 153,900 acres, dated March 25th, 1795.

766 The Abner Cloud grant of 5,000 acres, of which I took charge, can be identified on the map by beginning at the sugar marked red "R" on "old Harrison county line," thence with the small red line northeasterly to "11," thence parallel with said old Harrison county line to "22," thence southwesterly to said county line and with it back to the beginning, at red "R;" said lot is marked "5,000" in red and lies northeast of and on said county line. It will be seen by papers filed in the suit that this tract was

granted to Abner Cloud on the 10th day of March, 1790, and that all the foregoing tracts were conveyed to Allen T. Caperton, in his lifetime, by two deeds from John Williams and also from the Chesapeake and Ohio Railroad Company, reconveying parts which had been conveyed by him to said company; which deeds are also filed with the bill.

9,330 The 9,330 acres, of which I took charge as agent, can be identified on said map by beginning at red "L," between the forks of Cranberry, on the old Harrison county line, and following the small red line northeast to the line of the lot marked in red figures "2,738;" thence around with figures 98, 88, 77, 66, 55, 44, 33, and 22 back to said old county line and with it back to the beginning, at "L."

This tract is marked on the map with the red figures "9,330," indicating the number of acres it contains, but the heirs of the late Allen T. Caperton only claim 9,311 acres of said tract, 19 acres of it having been conveyed by Austin Hollister in his lifetime and before he conveyed said tract to said Caperton to one David Baughman.

The tract of 5,938 acres may be identified on the map by beginning at the aforesaid red "L" on said old county line and following the said small red line northerly to the lot marked with the red figures "2,738;" thence with four lines of same via figure 11, and thence leaving with the red lines southeasterly to a corner at or near the mouth of Bonnock Shoal run and between it and the north fork of Williams river, thence southwesterly to said old county

767 line and with it back to the beginning, at red "L;" said tract is marked on the map with the red number "5,938," and is divided by the north fork of Williams river.

The 350-acre tract can be identified on the map by beginning at the northeast corner of the 5,000 acres, figure 22, and following the small red line northeasterly to the corner marked 33, between Turkey creek and Gauley, thence a southwest course to the north lines of said 5,000 acres and with it back to the beginning at 22. The last three tracts identified, to wit, the 9,311, 5,938, and 350 acres, are claimed by Caperton's heirs under a deed from Austin Hollister and wife to said Caperton, dated February 12th, 1859, a copy of which is filed with the bill.

The 2,738 acres known as the Layne tract may be identified from its location on both sides of Gauley river, below Strait creek and above Turkey creek. It is marked on the map with the red number "2,738," intended to show the acres it contains, and joins the 9,330-acre lot at corners and lines from along the north and 55, 66, 77, 88 to 98, and the 5,938 acres on four lines along the north end.

It was conveyed to Allen T. Caperton by deed dated the 12th day of April, 1859, D. B. Layne & wife, a copy of which is filed with the bill of the plaintiffs. The foregoing are all the tracts of which I took charge as agent aforesaid. They form one large body, except where cut in two by the 23,787 acres, reservation included in the blue lines between Cranberry and the north fork of Cherry.

The further taking of these depositions is adjourned until tomorrow, April the 30th, 1885, at the same place and within the same hours.

B. C. CONRAD,
Notary Public.

768 THURSDAY, *April 30th*, 1885.

The taking of these depositions is this day resumed, pursuant to adjournment on yesterday, at the same place and with the hours specified *and* the caption and the annexed notice.

Deposition of JAMES S. CRAIG resumed as follows, to wit:

Q. 5th. Please state any information you may possess relative to the possession of these lands of A. T. Caperton's estate, whether or not you found any one in possession, and all you know about it.

A. I found that Samuel Hinkel was living on Gauley in that part of the 77,104 acres which had been sold to the Chesapeake & Ohio Railroad Company and reconveyed to said Caperton, viz., the 11,459 acres. Mr. Hinkle informed me that he had been placed in charge of all the lands of Caperton by said Caperton himself; that his authority had been continued by M. Triplett, who was appointed agent for Caperton's Webster lands in 1877 and acted as such until some time in 1880. Said Hinkle exhibited an informal lease from said Triplett, and I continued his authority to occupy said lands, to protect the same from squatters and trespassers, reserving the right to lease to others. He is still living on the land. On the 3rd day of August, 1881, I made a formal lease of 9,330 acres (less 19 acres sold to David Baughman) to David Hammons. Said lease is here filed as part of this deposition, marked Exhibit "O." On the 3rd day of August, 1881, as agent for A. T. Caperton's heirs, I leased the 11,459 acres, part of the 77,104 acres, to William Mullins, which lease is herewith filed as part of my deposition, marked Exhibit "P."

Mr. R. C. Clevinger or G. M. Sawyer first told me of the Mark Hammons lease filed with said Clevinger's deposition herein. I employed him to procure it for me, and directed the parties through him to continue their possession under it. I have recently given Boone Burrows a lease on part of the 11,459 joining the 5,000

769 acres, Abner Cloud tract, which lease is not in my possession.

I sold N. F. Smith 200 acres out of the Abner Cloud tract, and gave him possession of the residue of it without a formal lease. He informed me only a few days since that he had driven off of it some two or three parties who were cutting timber to build a house in which to set up adverse possession to the Caperton heirs. Wilbur Baldwin made application to me to purchase a place at Cranberry bottom. This was about March, 1879. He had been living there, he said, for some time, but could not locate the place so I could know whether it was on the Caperton lands or in one of the tracts sold by Mr. Caperton. He then asked me for the privilege of living there as a tenant of the Caperton heirs, which I granted, and afterwards, finding out that he lived up on Cranberry above the reser-

vations or sold land, I made out and sent him a formal lease by mail, which he says never reached him, but he occupied the land until something over a year ago, leaving S. McClung in possession, who lately sold out to Marshal Mullins, who still occupies the premises. I have had no notice that any of the occupants named have atto-ned their possession to any adverse claimant to the Capertons.

In the year 1865, only a few days before the assassination of President Lincoln, I was at the house of Solomon Taylor, then the tenant of Allen T. Caperton, in company with S. H. Williams, G. L. Brown, and James H. Williams, the son of John Williams, who conveyed said lands to said Caperton, and a number of other persons. Mr. Taylor then informed us that he was the earliest pioneer of that region, and my indistinct recollection is that he informed us that he had been the tenant of John Williams before he sold the lands to Mr. Caperton, or that he had settled there about the time of said sale. I cannot be positive which. He must have been there then for a number of years at least before 1865, for his
770 cabin and buildings looked old and his improvement was large and the fields near the house moderately clear of chestnut stumps, of which timber they had been cleared the large old chestnut stumps standing thereon and the dead timber on the surrounding newer fields bore ample testimony.

We found Mr. Taylor exercised with fear and dread that he should lose his home and his improvement by confiscation on account of the sympathy of his landlord, A. T. Caperton, with the rebellion. He thought the penalty must be confiscation of lands at least should the rebellion prove a failure. Mr. Caperton, however, on the 20th day of May, 1869, conveyed to him 313½ acres, including his improvement. His improvement, near as I can locate it, is represented by the black square made by me on the Yeager map, in Nicholas county, where lots No. 8, 9, 10, the 400-acre grant, and the tract marked "1,703" all corner together.

I have settled quite a nice little colony on this part of the land below Cherry river and on that part of the 41,171½ acres, part of the 77,104 acres, located between Cranberry, Cherry, and Gauley rivers, not shown on the map. I have James Mullins and others looking after this part of the land, ranging cattle and watching the timber. My own supervision began here, as before stated, in 1877, and at that time Hon. A. T. Caperton was gratefully remembered and his ownership of the land recognized by all the settlers on it to whom I talked, and I talked to nearly, if not quite, all of them, for he had been there among them and had been giving the land some personal attention. It is well known to me that the late Samuel Thompson, of Greenbrier county, acted as the agent of A. T. Caperton for these lands in both Nicholas and Webster counties for almost a score of years; that he spent considerable time on them in locating, surveying, and supervising openly with his personal attention as such agent. This is all that I can now recall concerning the possession.

771 Q. 6th. *How* have you or not any knowledge or information concerning the payment or non-payment of taxes on these lands of A. T. Caperton's estate? If so, please state it and all you know about it.

A. My information on that subject is that all the taxes charged and chargeable on these lands in both Nicholas and Webster counties were duly paid up to and including the year 1873. For the year 1874 the lands in both counties were returned delinquent and forfeited to the State for the taxes of that and subsequent years up to and including the year 1880. These taxes were paid and the redemption of the tracts forfeited effected by proceedings in the circuit courts of both counties in August, 1881, certified copies of which proceedings are filed in the suit and are here referred to for full and complete information on the subject.

The decrees rendered redeeming the lands therein named by separate tracts directed the re-entry and assessment of taxes on same on the land books of said counties of Nicholas and Webster for the year 1881, in the name of Allen T. Caperton's estate, and entry of said land so directed was duly made. A certified abstract from the land book of Nicholas county for the year 1881, showing said entry of the tracts in that county, is herewith filed as part of my deposition, marked "O." A certified abstract from the land book of Webster county for the year 1881, showing the re-entry in the name of said Caperton's estate of the lands redeemed in that county, is herewith filed as part of this deposition, marked Exhibit "R." The said lands so redeemed and re-entered have had all the taxes charged thereon for the years 1881 and 1882 in the name of said A. T. Caperton's estate paid thereon through me to the sheriff of Nicholas and Webster counties, whose receipts for same I obtained at the time of payment, and shortly thereafter sent them by mail to the administrators of said

772 Caperton's estate that they might be filed as vouchers for them in said suit of A. T. Caperton's administrators *vs.* A. T. Caperton's heirs and creditors, and the said receipts are now in my possession or under my control. The taxes assessed and charged on said lands for the year 1883 and 1884, in the name of said Caperton's estate, although past due and not returned delinquent, have not yet been paid. They were held up by the sheriffs of Nicholas and Webster counties at my request, in order to give the parties longer time in which to pay them.

It will be seen by reference to the report of the commissioner of school lands for Nicholas county, in the certified copy of proceedings to redeem the Nicholas lands of said Caperton's estate, that the 41,171½ acres, with the other tracts located in that county, were omitted from the land book of said county for one year, to wit, for the year 1880; that all the said lands were returned delinquent for the taxes thereon of the years 1877 and 1878 and sold by the sheriff of said county in the month of October, 1879, for said delinquent taxes of 1877 and 1878, and were purchased by deponent, except the 41,171½, reported as 41,072, purchased by M. M. Malcolm and J. Bane, as will fully appear from the certified abstract from the said

sheriff's recorded report of sales made in said month and year, herewith filed as part of my deposition, marked Exhibit "S."

Of the tracts purchased by me belonging to said estate of Caperton I turned the receipts over to Judge James F. Patton, one of the commissioners, for the benefit of said estate.

I had not money at the time of the sale with which to purchase the 41,072 acres, so I arranged the purchase of same with said Malcom, and on the day of sale purchased the same in the name of said Malcom & Bain, as it stands reported.

On the 25th day of October, 1880, as agent of said Patton and John Echols, commissioners, I redeemed said tract on behalf of said Caperton's estate, as will fully appear from the certified copy
773 of the certificate of redemption, on file in the clerk's offcie of Nicholas county, here filed as a part of my deposition, marked "U."

A part of the lot of 11,459 acres in Webster county, to wit, 10,459 acres thereof, was sold on the 3rd day of October, 1881, for delinquent taxes thereon in the name of P. B. Adams for the years 1879 and 1880, and was purchased by one James Woodzell for the sum of $209.65. On the 28th day of September, 1882, as agent for A. T. Caperton's heirs, I redeemed said land from said Woodzell by the payment to the clerk of Webster county of $234.80, all of which will be seen by reference to a certified copy of the certificate of redemption, herewith filed as part of my deposition, marked Exhibit "V."

It will be seen be reference to the certified copy of the record in this case of A. T. Caperton's heirs *vs.* P. B. Adams & others that said Adams procured a tax title for the whole of said tract of 11,459 acres, and afterwards or about the time he procured said tax title he conveyed 1,000 acres thereof to G. M. Sawyer, which was deducted from said whole tract, leaving 10,459 acres standing charged in the name of said Adams, which accounts for the reduction of the tract sold to 10,459 acres.

This is all I now recall concerning the payment of taxes on said lands.

Q. 7th. Look at the tract or lot marked in red with the number "5,000," bounded by the small red lines beginning at red "R" on the line marked "old Harrison county line," thence nearly N. E. to the corner "11," thence nearly S. E. and *a*prallel with said "old county line" to the corner "22," thence nearly southwest to said old county line and with it back to the beginning at red "R," and state if you know what tract of land it represents, what county it was located in before the formation of Webster county, and in what county it is now located.

774 A. I have looked at it. It represents the Abner Cloud tract of 5,000 acres, granted by the Commonwealth of Virginia to Abner Cloud on the 10th day of March, 1790; conveyed by John Brown, commissioner of delinquent and forfeited lands, to John Williams, June 20th, 1842, and by said Williams and wife to Allen T. Caperton, February 21st, 1850. Said tract was in Nicholas county from the time of its formation, about the year 1817 or 1818, until the formation of Webster county under the act passed by the

General Assembly of Virginia January 10th, 1860, and in that part of said Nicholas county which had formerly belonged to Harrison county, and had been divided between Randolph and Nicholas, for the line between Nicholas and Randolph crossed the point of Point mountain above Webster C. H., including said court-house in Nicholas.

The formation of Webster took the Abner Cloud tract into that county, for the line between Webster and Nicholas crosses Gauley river at the mouth of Stroud's creek.

And further deponent saith not.

JAMES S. CRAIG.

Exhibit "O," referred to in the deposition of James S. Craig, is in words and figures as follows, to wit:

This deed of lease made the 3d day of August, 1881, between James S. Craig, agent for the heirs of A. T. Caperton, deceased, of the first part, and Daniel Hammons of the second part. Witness, that the said Craig, agent as aforesaid doth demise unto the said Daniel Hammons all that certain tract or parcel of land containing 9,330 acres (less 19 acres sold to David Boughman) lying in Webster county in the State of West Virginia, on the waters of Gauley and Williams rivers, being the same land that was granted to Austin Hollister by grant dated November 1st, 1855, and conveyed by said Hollister to said A. T. Caperton by
775 deed dated February 12th, 1859, and recorded in Randolph county, in Deed Book No. 23, page 455, from this date to the 10th day of August, 1891, the said Hammons paying to said agent as aforesaid therefor during the said term the annual rent of ten dollars per year, to be paid in taking care of said land and keeping off trespassers, and squatters, and such improvements as he may see proper to put thereon. But this lease is not in any manner to interfere with any sale of the land that may be made by said Caperton's heirs at any time during said term, or the right to make leases of parts thereof to other parties, but such leases shall not include any part of the improvements which may have been placed thereon by said Hammons.

Witness the following signatures and seals.

JAMES S. CRAIG, *Agent.* [SEAL.]

his
DANIEL x HAMMONS. [SEAL.]
mark.

Attest: C. P. DORR.

STATE OF WEST VIRGINIA, *Webster County,* } *To wit:*

I, George M. Sawyers, a notary public in and for said county, do hereby certify that Daniel Hammons and James S. Craig, agent, whose names are signed to the foregoing deed of lease, bearing date

on the 3rd day of August, 1881, this day personally appeared before me in my said county and acknowledged the same.

Given under my hand this the 3rd day of August, 1881.

GEORGE M. SAWYERS, *N. P.*

Exhibit "O," referred to in the deposition of James S. Craig, is in words and figures following, to wit:

This deed of lease made the 3d day of August, 1881, between James S. Craig, agent for the heirs of A. T. Caperton, de-
776 ceased, of the first part, and William Mullins, of the second part, witnesseth: That the said Craig, agent as aforesaid, doth demise unto the said William Mullins all that certain tract or parcel of land lying in Webster county, West Virginia, on Williams river, containing 11,459 acres, being a part of the 77,104 acres which was conveyed by deed bearing date on the 21st day of February, 1850, from John Williams to the said A. T. Caperton, and by him to the Chesapeake & Ohio R. R. Company, who by their deed dated the 20th day of February, 1874, reconveyed said 11,459-acre tract to the said A. T. Caperton, from this date to the 10th day of August, 1891, the said Mullins paying to said agent as aforesaid therefor the sum of ten dollars per annum, to be paid in taking care of said land in keeping off trespassers, and squatters, and such improvements as he may see proper to put thereon. But this lease is not in any manner to interfere with any sale of the land that may be made by the said Caperton's heirs at any time during said term, or the right to make leases of parts thereof to other parties, but such leases shall not include any part of the improvements which may have been placed thereon by the said Mullins.

Witness the following signatures and seals:

JAMES S. CRAIG, *Agent.* [SEAL.]

his

WM. x MULLINS. [SEAL.]

mark.

Witness:

C. P. DORR.

P. F. DUFFY.

Exhibit "R," referred to in the deposition of James S. Craig, cannot be found after diligent search by the clerk.

Exhibit "S," referred to in the deposition of James S. Craig, is in the words and figures following, to wit:

EXHIBIT "S."

List of Real Estate within the County of Nicholas Sold in the Month of October, 1879, for the Non-Payment of Taxes Thereon for the Years 1877 and 1878, and Purchased by Individuals.

No.	Name of person charged with taxes.	Quantity of land charged.	Estate held therein.	Local description of land.	Amount of taxes due thereon for State and State school purposes, including interest and damages, for which sold.		No.	Amount of county tax due thereon, including same.		Amount of district tax due thereon, including same.		Quantity of land sold.	Date of each sale.	Name of purchaser.	Amount of purchase-money paid, including interest, damages, commissions, and fee for receipts.
	Kentucky district:				For the year 1877.	For the year 1878.		For the year 1877.	For the year 1878.	For the year 1877.	For the year 1878.				
14	Caperton, Allen T.	1,000	Fee	Gauley waters	2 02	1 91	14	4 17	3 50	2 36	5 71	1,000	Oct. 29	J. S. Craig	23 26
15	Same.	1,260	"	" " "	2 50	2 36	15	5 15	4 31	2 91	7 07	1,260	" "	" " "	28 68
16	Same.	600	"	" " "	1 61	1 52	16	3 33	2 80	1 88	4 57	600	" "	" " "	18 63
17	Same.	1,000	"	" " "	1 99	1 87	17	4 08	3 43	2 31	5 60	1,000	" "	" " "	22 81
18	Same.	1,000	"	" " "	2 02	1 91	18	4 17	3 50	2 36	5 71	1,000	" "	" " "	23 26
19	Same.	693	"	Cherry	1 37	1 30	19	2 82	2 37	1 60	3 88	693	" "	" " "	15 66
20	Same.	1,389½	"	"	2 81	2 65	20	5 79	4 85	3 26	7 93	1,389½	" "	" " "	32 18
21	Same.	41,072	"	"	81 18	76 75	21	167 76	140 72	94 49	230 24	41,072	" "	M. M. Malcom & J. Bane	925 88
22	Same.	300	"	"	61	58	22	1 25	1 04	71	1 73	300	" "	J. S. Craig	7 18
23	Same.	400	"	Gauley	80	75	23	1 66	1 40	92	2 27	400	" "	" " "	9 38
24	Same.	1,000	"	"	2 00	1 91	24	4 17	3 50	2 36	5 71	1,000	" "	" " "	23 24
25	Same.	1,000	"	"	2 02	1 91	25	4 17	3 50	2 36	5 71	1,000	" "	" " "	23 26
26	Same.	1,000	"	"	1 98	1 87	26	4 08	3 43	2 31	7 48	1,000	" "	" " "	25 00
27	Same.	1,000	"	"	2 02	1 91	27	4 17	3 50	2 36	5 71	1,000	" "	" " "	23 86
28	Same.	1,000	"	"	1 98	1 87	28	4 08	3 43	2 31	5 60	1,000	" "	" " "	22 80
29	Same.	1,000	"	"	2 02	1 91	29	4 17	3 50	2 36	5 71	1,000	" "	" " "	23 26
30	Craig, J. S., and J. G. Malcom.	6,200	"	" waters		5 78	30		10 64		17 84	6,200	" "	J. S. Craig & M. M. Malcom	40 33
31	Jones, Jno. W.'s, est.	202	"	S. S. Gauley river		75	31		1 40		2 27	202	" "	" " "	5 42
32	Same.	700	"	" " " "		1 31	32		2 40		3 93	700	" "	" " "	9 19
1	Lewis, Mary P.	2,976	"	Cranberry	5 66		1	10 39		16 99		2,976	" "	R. A. Kincaid	39 91
2	Nichols, Henry	170	"	Brushy meadow	51	48	2	1 05	89	60	1 45	170	" "	Anne E. Hamilton	6 08
3	Putnam, Thos. G.	3,100	"	Gauley waters		3 35	3		6 13		10 62	3,100	" "	M. M. Malcom and J. S. Craig	23 07
4	Rupert, Cyrus	340	"	Grassy creek		1 36	4		2 80		1 59	340	" "	C. A. Rupert	6 98

The following is a copy of the certificates attached to the list of sales for the county and duly entered of record with sale-list:

"I, John G. Malcom, sheriff of the county of Nicholas, do swear that the above list contains a true account of all the real estate within my county which have been sold by me during the present year for the non-payment of taxes thereon for the years 1877 and 1878 and purchased by individuals, so help me God."

JOHN G. MALCOM, *Sheriff.*

Sworn to and subscribed before me this 30th day of October, 1879.

JOHN D. ALDERSON,
Notary Public.

STATE OF WEST VIRGINIA, }
Nicholas County. }

CLERK'S OFFICE, *Nov.*, 1879.

I, John A. Hamilton, clerk of the county court of Nicholas county, certify that the foregoing is a copy of the list of real estate sold by the sheriff of Nicholas county in the month of October, 1879, for the non-payment of the taxes due thereon for the years 1877 and 1878, and purchased by individuals, as returned by the sheriff to this office on the 10th day of October, 1879.

Teste: JOHN A. HAMILTON,
Clerk Nicholas County Ct.

STATE OF WEST VIRGINIA, } *To wit:*
County of Nicholas, }

I, John A. Hamilton, clerk of the county court of Nicholas county, in the State aforesaid, do certify that the foregoing are true abstract copies from the sheriff's list of lands in Nicholas county, Kentucky district thereof, sold on the 29th day of October, 1879, for the taxes of the years 1877 and 1878, as the same now stand recorded in my office, on pages 43 and 44 of the book kept by me for that purpose, together with a true copy therefrom of the affidavits of the sheriff who made said sale and the certificates thereunder entered.

[SEAL.] Given under my hand and seal of court this 25th day of April, 1885.

JOHN A. HAMILTON, *C. N. C.*

779 Exhibit "U," referred to in the foregoing deposition of James S. Craig, is in the words and figures following, to wit:

Received of James S. Craig, agent for James F. Patton and John Echols, commissioners in the case in the circuit court of Monroe county, West Virginia, of A. T. Caperton's adm'rs *vs.* A. T. Caperton's heirs and creditors, and also administrators of the estate of A. T. Caperton, dec'd, one thousand and thirty-six dollars and forty cents ($1,036.40) in redemption of the tract of 41,072 acres of land returned delinquent by the sheriff of Nicholas county for the non-payment of the taxes assessed thereon for the years 1877 and 1878 and was sold by said sheriff for said taxes on the 29th day of Octo-

ber, 1879, in the name of Allen T. Caperton and was purchased by M. M. Malcolm and J. Bain at said sale for the sum of $925.88. Said sum of $1,036.40 includes said sum of $925.88, with interest thereon at the rate of twelve per cent. per annum to this day, and, the said M. M. Malcolm and J. Bain being non-residents of this county, the parties claim the right to redeem in this office.

Given under my hand this 25th day October, 1880.

JOHN A. HAMILTON,
Clerk Nicholas County Court.

Endorsed on the back with the words and figures following, to wit: Filed October 25th, 1880. J. A. Hamilton, C. N. C.

STATE OF WEST VIRGINIA, }
County of Nicholas. }

I, John A. Hamilton, clerk of the county court in and for said county and State, do certify that the foregoing is a true copy of the redemption receipt, together with the endorsement of filing thereon, as it appears on file in my office.

780 [SEAL.] Given under my hand and seal of court this 25th day of April, 1885.

JOHN A. HAMILTON, *C. N. C.*

Exhibit "V," referred to in the foregoing deposition of James S. Craig, was not found after diligent search by the clerk.

STATE OF WEST VIRGINIA, } *To wit:*
Webster County, }

I, B. C. Conrad, a notary public in and for the county and State aforesaid, do hereby certify that the foregoing depositions of C. W. Benedum and others were duly taken, sworn to, and subscribed before me at the time, place, and within the hours and for the purpose stated in the caption and annexed notice and pursuant to adjournments had and mentioned.

Given under my hand, as notary public aforesaid, this 30th day of April, 1885.

B. C. CONRAD,
Notary Public.

And on another day, to wit, on the 18th day of September, 1886, the following depositions were filed in the clerk's office of the said court:

I, B. C. Conrad, a notary public for the county of Webster, State of West Virginia, do hereby certify that the following-named witnesses whose depositions were heretofore taken by the plaintiffs in a suit in equity then and still pending in the circuit court of the United States for the district of West Virginia, in which
781 Tamlin Braxton and others were plaintiffs and Benjamin Rich and others were defendants, have been recalled by said plaintiffs at the request of the defendants for cross-examination and their testimony, after being again duly sworn to speak the truth

and whole truth, was by the undersigned reduced to writing and intended to be read as part of the deposition of the said witnesses heretofore taken and filed in said cause or suit and as if the same had been taken and certified at the same time as their testimony-in-chief:

WEBSTER C. H., *Sept. 11th*, 1886.

Present: As counsel for plaintiffs, B. W. Byrne, and as counsel for defendant-, Caleb Boggess.

782 Cross-examination of pl't'ffs' witnesses:

ANDREW MCELWAIN, after being sworn to speak the truth, the whole truth, and nothing but truth, deposes and says:

By counsel for def'ts:

1st Q. You will please state whether the assessor's book for the year 1870, now on file and referred to by you in your examination-in chief, is one of the official books made out by you for the year 1870 and returned to the board of supervisors of Webster county.

Ans. This book now here present and referred to is not one of the three official books made out and returned by me, but is a copy of the books I did make out. It is a book I kept for myself as a guide, and I afterwards loaned this one to the clerk.

2 question. Did you as assessor for that year make and return to the recorder three official land books properly certified and sworn to, as the law required?

Ans. I did.

3 question. After you had made out and returned such books were they examined for correction, as the law required?

Ans. They were.

4 question. Are you now prepared to state what corrections, if any, were made in said books upon your official examination thereof?

Ans. No, sir; I am not.

5 question. Please state whether you were more generally known as Andrew Wain.

Ans. I principally go by that altogether.

733 6 question. Do you know the tract of 58,500 acres claimed by the defendants and referred to in this suit?

Ans. I know where it was always said to lay—in the Gauley and Williams river country, south of this.

7 question. Please state whether you were in possession of any part of the said land; if so, for how long and under whom did you take possession or claim.

And. Yes, sir; I bought three hundred acres from Mr. Rich, and I have his title bond for it, 6 or 8 years ago, and then I took a lease for all the balance of the survey from Mr. Benjamin Rich at the same time.

8 question. State whether you have continued in possession of the same since the time of the said purchase and lease.

Ans. I have never lived on it, but I consider that I have. I have cut timber on it, and nobody else has ever bothered it, and I consider that I have.

9 question. Are you still exercising care and control over same under your said lease and purchase?

Ans. I consider that I have. I have been trying to get one of my boys to go on it for the last five or six years, but never could get him to go.

Re-examined by counsel for plaintiff-:

1 Q. Please state where you live and how long you have resided where you now live.

Ans. I live in Braxton county, close to the Webster county line. I have lived there since March, 1883.

2 question. How far do you live from said tract of 58,500 acres of land?

784 Ans. About twenty-two miles.

3 question. Did you ever live on any part of said tract claimed by Benjamin Rich?

Ans. I never have lived on it nor occupied it. I have cut timber on it. I never had any of it in cultivation outside of my old farm. I always understood that my old farm laid inside of that survey.

4 question. Had you title to your old farm, which you say was included in the 58,500-acres survey; and, if so, *long* how long has it been occupied by you and others under the same title?

Ans. Yes, sir; it was occupied long before I was born. Simpson Sawyers occupied it in 1846, and under that title it has been occupied ever since.

5 question. State whether or not you know the boundaries of the 58,500 acres referred to.

Ans. I don't.

6 question. Did you consider that Rich was the owner of the land you lived on?

Defendants except to last question because it is improper and irrelevant.

Ans. I didn't consider that he would hold that old tract. I never have that I was living on at that time.

7 question. State whether or not the possession of the land you was living on at the time that you claimed that you was holding for the defendants.

Ans. I don't claim that I was holding possession of the old
785 tract that I lived on for him. At the time I considered it my own. What I had bought and what I leased I considered I was holding for him.

8 question. How did you occupy the land that you considered that you was holding for him?

Ans. By lease. When I wanted to cut timber on it I went and done it. I cut a lot of saw-logs on it.

Further this deponent saith not.

ANDREW McELWAIN.

B. P. CONRAD, being sworn to speak the truth, the whole truth, and nothing but truth, deposes and says:

By counsel for def'ts:

1 question. State whether there was in your office at the time you formerly testified as a witness in this case the official assessor's land book for Webster county for the year 1870, with the certificate of verification and examination. If so, is it still there?

Ans. There was a land book in the office at that time, but whether it was certified or not I do not know, as I do not recollect of ever examining for the certificate of verification. The land book for the year 1870 now before me I believe to be the one that was in the office at the time I was clerk and when I was examined before as a witness in this case, and is the only book for said year I recollect of having ever seen. The certificates of verification and examination are blank and don't appear to have been certified and sworn to. It was this book that I referred to in my examination-in-chief in my answer to question No. 2. There is no endorsement on the back of said book showing that it was ever filed.

786 2 question. Please look at the list of delinquent lands in the county of Webster returned for the year 1870, referred to in your examination-in-chief, question and answer No. 7, and the entry therein of 100,000 acres in the name of Fleury, Viscount Clifford, and state whether the entry of that name differs in handwriting from other names in the list for that year.

Ans. The handwriting seems to be in the same handwriting of other entries on the same page on which it appears.

3 question. What proportion of the entries in the said list of the said year is in the handwriting of Charles McDodrill?

Ans. I don't think that any of the entries in said list are in the handwriting of Charles McDodrill. The said list is made out in two or more handwritings.

4 question. Examine the entries on said list which are copied and contained in Exhibit "A," filed with your deposition on your examination-in-chief, and say how many of the entries in the list from which this list is copied are in the same handwriting with the name "Fleury, Viscount Clifford."

Ans. All the entries contained in said Exhibit "A" appear to be in the same handwriting and on same page in said delinquent list.

Further this deponent saith not.

B. P. CONRAD.

GEORGE M. SAWYERS, being sworn to speak the truth, the whole truth, and nothing but truth, deposes and says:

By def'ts' counsel:

1st ques. Please state what particular part of the Caperton
787 lands you undertook to lease to Mark Hammons, referred to in your examination-in-chief.

Ans. A portion of land claimed by Caperton on Williams river,

at the forks of said river, on the south side of Williams river, where William Mullins had lived and moved from.

2nd question. How long after William Mullins had moved did you make the lease referred to?

Ans. I can't state exactly. I suppose about a month.

3rd question. What authority had you for making the lease and why did you make it?

Ans. Some time previous to the time I made this lease Mr. Caperton told me if I would get William Mullins off of this land that he would give me $200, so that he would not have to bring a suit of ejectment against Benj. Rich. I told him that I did not know that I could do it, and when I saw that Mullins had moved away I then assumed an agency for A. T. Caperton, and leased the land to Mark Hammons. I then became uneasy about assuming the agency without the consent of A. T. Caperton. I then wrote a letter and sent the lease to Mr. Caperton, and he wrote his approval on the back of it and returned it to me.

4th question. How long had Mullins been occupying the improvement?

Ans. Mullins had been living there from three to five years before I leased to Mark Hammons.

5th question. State whether Caperton, at the time you refer to, knew that said Rich claimed to be the owner of the land, and that William Mullins claimed to hold the possession of the said land under Benj. Rich.

788 Ans. Yes, sir; I think he did.

6th question. How long before that time had said Caperton knowledge of Rich's claim to said land?

Ans. I think, as near as I can recollect, in 1873. I informed Mr. Caperton by sending a copy of the lease executed by Benj. Rich to William Mullins.

7th question. Did not the said Caperton know of Rich's claim to these lands prior to the time referred to?

Ans. In 1867 I was at Mr. Caperton's house. He asked me if I would be kind enough to inform him if any parties was trying to establish title to his lands. In 1868 I learned that there was a good many large tracts of land entered upon the assessor's books for the year 1868, covering up the greater portion of Mr. Caperton's lands. I went to the assessor and obtained a list of those lands entered upon the books. I then sent a list in a letter to Mr. Caperton, informing him of the fact of such entry. I afterwards met with Mr. Caperton, in 1869 or '70. I asked Mr. Caperton if he had received my letter, and he said he had. I afterwards, about the time that Mr. Rich got his deed, informed Mr. Caperton of that fact.

7th question. State, if you know, when the said Mark Hammons left the premises that you leased to him.

Ans. I don't know exactly when.

8th question. State, if you know, whether, shortly after the lease from you as agent for Caperton, the land was not again taken possession of by William Mullins or other persons claiming under William Mullins as assignees of the lease to him from Rich.

789 Ans. I don't know.

9th question. Do you remember for how long Rich's agent had leased to William Mullins, or do you not know that the said lease to William Mullins had not expired when you made the lease to Mark Hammons?

Ans. I don't remember and don't know but the lease I saw and copied from was in the handwriting of James Woodzell, but I don't remember the date of it.

10th question. Don't you know that the property embraced in the lease referred to to William Mullins is now in the possession of persons claiming under Rich and have been for a number of years past?

Ans. I don't know within myself, but I have been informed by those parties who live upon the land that they are there under Rich and have been for a number of years—perhaps 5 or 6 years or perhaps more.

11th question. Was not Mullins in possession, claiming under Rich, in 1873, when you got a copy of the lease referred to?

Ans. I think that he was. I know he was there, and he told me that he was claiming under Benj. Rich.

12th question. Has not that land at that place been continuously in possession since the time last referred to by persons claiming to hold the same under Rich? If not, state what part of the time since then it was not in possession under such claim.

Ans. I don't know.

Re-examined by counsel for plaintiffs:

1st question. Will you please state the names of the par-
790 ties that you say in your answer to Ques. No. 10 claim under Benj. Rich?

Ans. Peter Hammons, Sr., and Jesse Hammons, Sr.

Further this deponent saith not.

G. M. SAWYERS.

ROBERT C. CLEVINGER, being sworn to speak the truth, the whole truth, and nothing but truth, deposes and says:

By counsel for def'ts:

1st question. Where do you now live?

Ans. On Williams river.

2nd question. How long have you lived there?

Ans. Seven years last July.

3rd question. Where had you lived before you moved there?

Ans. On Birch river. I moved there from Birch river.

4th question. Whose land did you move onto from Birch river?

Ans. I moved onto Artemus Hamrick's land.

5th question. State, if you know, where Mark Hammons resided during the years 1874 and 1875.

Ans. I would have to state at this time that I don't remember exactly.

6th question. State, if you know, where he resided in the year 1876.

Ans. I don't suppose that I know.

7th question. State where he resided in the year 1877.

Ans. I don't suppose that I could tell you exactly.

791 8th question. Can you state where and when he ever had a residence?

Ans. I knowed of him living on Williams river and I knowed of him living on Elk river. He lived on Williams river when Stillner and my brother bought that lease from him. I was at his house when he lived on Elk river, about two years afterwards.

9th question. When was it that your brother and M. J. Stillner bought that lease from Mark Hammons?

Ans. Twelve or thirteen years ago.

10th question. What is the name of your brother who purchased the lease with M. J. Stillner?

Ans. Lewis Clevinger.

11th question. What did Lewis Clevinger do with his interest in the lease?

Ans. Let M. J. Stillner have it.

12th question. How long after he bought the lease with Stillner did he let Stillner have his share of it?

Ans. I don't know just how long, but a very short time afterwards.

13th question. When did you first see or hear of the Mark Hammons lease?

Ans. About eleven years ago I first heard of it.

14th question. From whom did you first hear of it?

Ans. M. J. Stillner and my brother, Lewis Clevinger.

15th question. Was that before or after they had bought it?

Ans. It was after they had bought it.

792 16th question. Was the land mentioned in the lease occupied at that time?

Ans. I think so.

17th question. Who occupied it?

Ans. M. J. Stillner and Lewis Clevinger occupied it.

18th question. How far did you live from them at that time?

Ans. I can't answer. I don't remember where I lived at that time.

19th question. How long did your brother and Stillner occupy it?

Ans. My brother himself never occupied, but Stillner lived on it one or two years, or a portion of two years.

20th question. How do you explain your former answer, in which you said the land was occupied by your brother and Stillner at the time you first heard of the lease?

Ans. I was mistaken in saying that Lewis Clevinger was one of the occupants. I meant to say him and M. J. Stillner purchased it.

21st question. What became of the land after Stillner left or ceased to occupy it?

Ans. He let Peter Hammons have it.

22nd question. How did he let Peter Hammons have it? Was it by getting off himself and Peter Hammons afterwards taking possession of it, or did Peter Hammons put him out and he allow Peter Hammons — retain it, or by what other means did he let him have it?

Ans. I don't know.

793 23rd question. Then how do you know that Stillner let Hammons have it?

Ans. I don't know. I have heard both Stillner and Hammons say so.

24th question. State how long after Stillner left the premises until you saw Peter Hammons in possession, if you know.

Ans. I can't state exactly. I suppose a year or two.

25th question. How long did Peter Hammons continue in possession after you first saw him there?

Ans. He has continued there ever since. I saw him there about two months ago.

26th question. Had you ever any conversation with Mr. Benjamin Rich about this land?

Ans. I had a conversation with him.

27th question. When and where did you have it?

Ans. The first conversation I ever had with Mr. Rich was a little above my house, where I am living, about ten years ago. I was living there then. The next conversation I had with him, I think, was at George M. Sawyers', about six years ago.

28th question. Who was you claiming to hold your lands under at the time of the last conversation referred to?

Ans. At the conversation with Rich I claimed under him, and I also claimed under Adams. I had bought of Adams, and Mr. Rich said it was his land. I said if it was I would work on it under him.

794 29th question. How long before the last conversation referred to had you claimed the said land under Rich?

Ans. I didn't claim land under him until after the second conversation I had with him.

30th question. At the first conversation referred to which you had with Rich didn't he tell you that you was there on his land and you must get off?

Ans. He had some such conversation, and said that I was living on his land and I left the land.

C. W. BENEDUM, being sworn to speak the truth, the whole truth, and nothing but truth, deposes and says:

By def'ts' counsel:

1st question. In your examination-in-chief you stated, "I have examined the records in my office and I find no deed on record for 58,500 acres to either one of the said Albert Owen, G. B. Shreve, or Benjamin Rich." Do you mean by this answer to say that the deed from James Woodzell, recorder of Webster county, to Benja-

min Rich, assignee of Albert Owen and G. D. Shreve, for a tract of 58,500 acres of land, and executed on the 28th day of September, 1870, was not entered of record in the office of the county court?

Ans. I certainly, at that time, was unable to find a record of that kind. Since then I have found a record of it.

2nd question. Do you mean by your answer to say that the deed was not then on record and you could not find it, or whether, in your examination for it, you overlooked it?

Ans. I mean to say that in my examination for it that I overlooked it. I find the deed is recorded in Book No. 1, pages
795 399 to 401, recorded Sept. 28th, 1870.

Further this deponent saith not.

C. W. BENEDUM.

The further taking of these depositions is continued until Monday, Sept. 13th, 1886, at the same place and between the same hours.

B. C. CONRAD,
Notary Public.

MONDAY, *Sept. 13th*, 1886.

The taking of these depositions is this day resumed, pursuance to continuance thereof, on Saturday, Sept. 10th.

Present: B. W. Byrne, as counsel for plaintiffs, and Caleb Boggess, as counsel for defendants.

SAMUEL HINKLE, being sworn to speak the truth, the whole truth, and nothing but truth, deposes and says:

By — defendants:

1st question. Please state where you live or resided about the 28th day of April, 1885. Give a particular local description of the place.

Ans. I lived in Glade district, on Gauley river, just above the mouth of a branch above Lane's bottom, a mile and a quarter above the post office. I live on the left side of Gauley river, going up, and about three miles above the mouth of Stroud's creek.

2nd question. Is not the place you have described entirely without any part of the lands claimed by the defendants, as laid down by Surveyor Yeager on his map?

Ans. It lies outside of the lands claimed by Rich.

3rd question. Do you now, or have you at any time since
796 the year 1869, lived upon, cultivated, or improved any part of the lands within the boundaries of the McCary survey?

Ans. I have not.

4th question. How long have you been living at the place designated?

Ans. Seventeen years and better.

5th question. State when and at what place you and the said Allen T. Caperton were when he gave you possession of his lands.

Ans. At Wm. P. Proctor's; just three-quarters of a mile below

my house. It is about three hundred yards from my house to the Caperton line. About seventeen years ago the first of May I moved to where I now live, and in the fall following Caperton gave me possession of his lands at the place named.

6th question. Did Caperton then do anything more than to tell you to see that there was no destruction of timber done on his land and to keep trespassers off of it? If he did anything else please state what it was.

Ans. After we made the contract about the land where I am living he then told me to see to all his lands and to keep trespassers off.

7th question. What sort of a contract did he make with you about the land you are living on and for how much land?

Ans. The contract he made with me, I was to have the land at seventy-five cents an acre the shape it was in, not to exceed three hundred acres. The contract was a verbal one.

8th question. Then, after you had entered into a verbal contract for a specific part of the land, what else did Caperton do, if
797 anything, except to tell you to see that the timber on his land was not destroyed and to keep trespassers off?

Ans. He did nothing else but to tell me to keep as my own the part I contracted for and to take general supervision of the whole of it and keep trespassers off.

Re-examination by counsel for plaintiffs:

1st question. Did you take possession of the land where you live as his land or as your own land?

Ans. I took possession of the land as Caperton's land, because we hadn't entered into a written contract.

9th question by def't-. If you were living on the land or occupying it in the spring of the year before you met Caperton at Proctor's house in the fall of the year thereafter and was then in possession of it, what else did you do afterwards to get any other or further possession under Caperton?

Ans. The way I got into possession of the land, Proctor was living below there and Caperton had promised the land to Proctor and Proctor told me that he would give way and let me have it if I wanted and I got Proctor to go and see Caperton about him giving away and letting me have the land, and he done so.

10th question. Then explain how all this could make you- possession which you then had under Caperton any the more so, after you had bargained with him for the land, if you were at that time claiming already under Caperton?

Plaintiffs except to the foregoing question for the reason that it involves a legal question that the witness may be able to solve.

798 Ans. By Proctor going there and seeing Caperton, that didn't give me possession until I seen Caperton myself.

Further this deponent saith not.

his
SAMUEL x HINKLE.
mark.

ROBERT C. CLEVENGER recalled by plaintiff-:

1st question. State where you resided in 1876.

Ans. I think that I lived at the forks of W'ms river.

2nd question. How did you happen to go there?

Ans. I moved to this country, I think, in the fall before, taking my family there, I think, in January following. I went there knowing that M. J. Stillner lived there by his telling me that he would let me have half of the lease that he had of that land.

3rd question. Under what authority did you occupy the land at the forks of W'ms river?

Ans. I suppose by a lease that M. J. Stillner had, that he sold me half of.

4th question. How long did you remain there?

Ans. I stayed there from the time I went there in January to the next March, a year; I left it.

5th question. Where did you move to from there?

Ans. I moved onto Mr. Hamrick's land to a place I still live at at this time.

799 6th question. Did you ever live on the land claimed by Benjamin Rich after you left there?

Ans. My house that I lived in is on Mr. Hamrick's land, but I suppose I have occupied land claimed by Mr. Rich by working on it.

7th question. By whose authority did you first occupy the land outside of the Hamrick lease that you improved?

Ans. By buying the land from Mr. Adams.

Question 8th. When did you buy the land from Mr. Adams?

Ans. I think that I bought it seven years ago last August, and occupied and commenced to improve it from that time.

9th question. Have you continued to occupy and cultivate the land ever since?

Ans. Yes, sir; I have been occupying the land ever since that time.

10th question. Did you or not ever lease any land from Benjamin Rich?

Ans. I saw Mr. Rich after that. He said I was on his land. I told him if I was on his land that I was willing to live on it under him.

11th question. And did you live on it under him?

Ans. Of course; I rec-on I agreed to occupy it under him, if it was his land. I was to have a piece of land when this suit ended.

12th question. If the land was not Rich's, under whom were you then occupying?

800 The defendant- excepts to last question because it is leading.

Ans. I don't know who the land belonged to.

13th question. How long did you occupy and improve the land referred to under your purchase from Adams?

Ans. I thought I was under Adams until his deed was set aside.

14th question. Do you remember when the deed was set aside?
Ans. No, sir.

Question- by def't-:

31st question by same. Were you not claiming and holding under Rich at the time the deed was set aside and before?

Ans. I had a contract with Mr. Rich, but I don't recollect when it was; but I told him if the lands was his I was willing to live under him. According to contract with Mr. Rich, I must have been. I don't mean before the deed was set aside; I mean at the time.

32nd question. Do you mean to say that the contract with Rich, under which you say you was holding possession under him, was made at the time when the deed was set aside and not before?

Ans. I mean that I don't know.

1st question by counsel for pl't'ff-. Did you or not ever take possession and occupy any of the land claimed by Rich and under him on account of the first conversation you had with him about it?

Ans. No, sir; not under the first conversation. I moved off and left the land a short time afterwards.

801 2nd question. State, as near as you can, when the last conversation occurred—how long ago—by reason of which you occupied under Rich.

Ans. I can't state exactly. I will have to say four or five years ago. It may be longer, or maybe not so long.

Question- by defendant-:

31st question by defendant-. Is your memory very reliable or very unreliable?

Ans. Anything I don't charge my mind with I don't pay much attention to it. You will have to be the judge of that yourselves.

32nd question. What century of the Christian era is this in which we are living?

Ans. I am not an educated man, and I don't know how to answer you. I know what a century is, or I think I know what a century is.

33rd question. What year of the era is it?

Ans. One thousand eight hundred and eighty-eight.

Plaintiff- excepts to the last question on the grounds that Mr. Boggess is not authorized by the board of education to examine school teachers.

Further this deponent saith not.

his
ROBERT C. x CLEVINGER.
mark.

JAMES WOODZELL, being first duly sworn to speak the truth, the whole truth, and nothing but truth, deposes and says:

By counsel for defendants:

1st question. Please examine the deed book or record in the recorder's office, and state whether there was a deed recorded during your term of office as recorder for 100,000 acres of land to
802 Viscount Clifford de Fleury.

Ans. There was such deed recorded.

2nd question. State when said deed was admitted to record.

Ans. It was admitted to record October the first, 1869.

3rd question. In your examination-in-chief you stated that you had been acting as the agent of the defendant Rich in relation to his lands in Webster county from or prior to 1870 or 1871 up to that time. Please state whether as such agent you made *and* written lease or contract with William Mullins in reference to the same.

Ans. I did.

4th question. Please state when you made such contract and all the circumstances which led to it.

Ans. Mr. Rich and Mr. Mullins made a verbal contract some time in June, 1871, in my office, which Mr. Rich directed me to put in writing. The contract was in substance that Mr. Mullins, who was then living on Mr. Rich's land, should continue on it, and have general oversight over it, cultivate as much of it as he might wish to, and range his cattle on it, and deliver to Mr. Rich the possession he had of the land, and Mr. Rich was to give Mullins 200 acres of land at any place he might designate within the lines of Mr. Rich's land. Mr. Mullins came back a short time afterwards to see me about it, but would not have it at that time reduced to writing, saying that his son, little Bill, was to get 100 acres of the land and he wanted to wait until his son came up, when he and little Bill would both come over and have the contract put in writing. I told
803 him to continue in possession of the land and to keep off any person who might want to come on it without authority from Mr. Rich or myself, and to bring his son over when he come up and I would give him the writing. He and his son both came over afterwards and I gave him the written contract and directed them both to continue in the possession of the land. I file as part of my deposition a copy of said contract, marked "W."

5th question. State how long the said Mullins and his son continued to occupy said land under said contract.

Ans. I can't tell how long Mr. Mullins occupied it, but for several years. His son, little Bill, had it in possession when I was with a surveying party running a line between Webster and Nicholas county—I think four years ago this fall—and, as far as I know, still occupies it. I know that he has continued to occupy it up to four years ago.

6th question. Please state to what lands of said Rich this conversation and contract referred to.

Ans. To three tracts of land: One of 100,000 acres, known as the

McClary tract; one of 105,000 acres, known as the Welch tract; one of 58,500 acres, known as the Banks tract.

7th question. Please describe the situation of the lands which was occupied at the time of the agreement by William Mullins, the possession of which was surrendered by Mullins to Rich.

Ans. It was on Williams river, at what is generally called the Three Forks, and within the McClary tract.

8th question. How much land had said Mullins been occupying and claiming at that place which he surrendered to said Rich at
804 the time of the said agreement?

Ans. I don't know how much; he had considerable improvement and ranged a good many cattle, but don't know how much land he claimed. He had some land cleared below and some above the forks of the river; it was in different parcels; I think in all there would be 25 or 30 acres cleared.

9th question. State if at any time you, as the agent of the said Rich, put all or any of said lands of his into the possession and occupancy of any other persons; if so, what part, to whom and when.

Ans. I did; I put Jesse Hammons, Peter Hammons, and Peter B. Barb in possession of Rich's lands, I think, in 1871. It might possibly have been in 1872, but I think it was in 1871; and some time afterwards I put N. F. Smith; I think they call him Nath. Smith; and I believe I put Arthur Hamrick into possession, but I not positive about that; and I put Wilbern Baldwin into possession. These were all to take and hold possession of the three tracts I have mentioned, except they were not to interfere with each other or with any person who might be in possession under authority from Benjamin Rich or myself. I gave Smith a contract about six years ago. He went onto it about the time I gave him the contract and built a house. I think it was in the McClary tract, near the line of the McClary and Banks tracts, but I think on the McClary side of the line. I have never seen that line run through. It was on the waters of Gauley river and on the mountain between Gauley and W'ms river-. I never was there but once, and I got lost in going there. I think I put Wilbern Baldwin into possession between six and seven years ago. He was living then on the land on Cranberry river, on the McClary tract.

I put Jesse Hammons into possession of all three of these tracts, particularly where he then lived and where he now lives,
805 which is on the left-hand fork of W'ms river, some two or three miles above the three forks. I put Peter Hammons in possession of all three of the tracts, but don't know exactly where he settled; somewhere near the three forks of W'ms river, as I understand. Peter Barb was on the land, and continued on the land under me, on Leatherwood creek, in the Banks and Welch surveys.

10 question. State for what time and during what period each of these persons last named so put into possession by you continued to cultivate, occupy, improve, or reside on it.

Ans. Jesse Hammons is still on his; Peter Barb stayed on his

possession till about 1875, and left his son, Moses N. Barb, on it. He remained two or three years, and moved across the mountain onto Gauley river, where he made another improvement and where he still lives. This last improvement is also in the Banks tract, and I think in the Welch tract. They have lived on and cultivated the land at each of the places named. I don't know how long Baldwin remained on his, but he is now off of it. I don't know whether Smith ever lived on his or not.

Peter Hammons claims to be still on and cultivating his claim; he still claims authority over these three tracts of land under Rich.

Re-examination by counsel for plaintiffs:

1st question by same. Please state whether or not you had a written contract with Peter B. Barb for the land referred to on Leatherwood, or with N. F. Smith.

Ans. I had not with Barb, but I gave Smith a written contract.

2nd question. Have you that contract in your possession?

Ans. No, sir; I have neither the contract nor a copy of it.

806 I gave him the contract and did not retain a copy of it.

Question 3rd. State whether or not you had a written contract with Wilbern Baldwin, Jesse Hammons, and Peter Hammons in relation to the possession of the lands you speak of.

Ans. I had not; but gave Jesse Hammons a written contract some time afterwards, under which he was to get land at another place, a copy of which contract was filed with his deposition in this case.

4th question. You state, in answer to a former question, that you don't know whether N. F. Smith ever lived on the land or not. Where does he now live?

Ans. He lives at Upper Glade, on the old Given place, and outside of the three tracts claimed by the defendants.

5th question. How long has he lived outside of the three tracts claimed by the defendants?

Ans. I don't know; I don't know whether he ever lived on any of them or not.

8th question. I will call your attention to question and answer No. 18 in your examination-in-chief and ask you to state why you think the description referred to was not a proper one.

Ans. It is no description at all of any transaction between Fleury and Benjamin Rich, but simply an entry made by the assessor to show that the tract of land which had been a year before charged with taxes in the name of De Fleury was in that year transferred for taxation purposes to Benjamin Rich.

9th question. Do you mean to say it was an improper entry

807 for the last purpose above stated?

Ans. No, sir; it was proper for that purpose.

10th question. State whether it was not your duty, as the recorder, to examine and compare the three assessor's books of taxable lands of Webster county for the year 1870 and correct any errors therein, and had there been, on such an examination and comparison,

omitted from all or any of them the De Fleury 100,000-acre tract described in the deed to him, which had been admitted to record the first day of October, 1869, would it not have been your duty to correct such books or book by causing it to be entered thereon before you certified them as such recorder to correct it?

Ans. It was my duty as recorder to make the examination and corrections, and if on such examination I had found the omission mentioned I would have made or caused to have been made such correction before certifying to the correctness of the books.

Examination by counsel for plaintiff-:

1st question by same. State whether or not it would be your duty as recorder to record a paper offered as a deed in your office which on its face showed that it was only a copy of a deed.

The foregoing question is excepted to by the defendant- because it is irrelevant.

Ans. Under some circumstances it would, and under other circumstances it probably would not be. I have not the law describing the duties of recorders before me and do not remember the circumstances under which it would be proper nor the circumstances under which it would be improper to record such a copy.

2nd question. You say in substance that it was your duty to
808 examine the assessor's land books, and, if any corrections were proper, to make such corrections by entering other tracts. In what order *in what order*, in reference to the alphabet, should such entries be made?

Ans. The names of the persons charged with taxes are usually placed in alphabetical order on the land books, and in making corrections by entering tracts that had been omitted it would be proper to make the entries in the same way. I don't remember what the law says about it.

3rd question. Was the entry of the De Fleury tract referred to entered in alphabetical order on the land books for the year 1870?

Ans. I don't know.

Further this deponent saith not.

JAMES WOODZELL.

Copy of Agreement with Deposition of James Woodzell.

This is the copy of a contract filed with the deposition of James Woodzell and marked "W."

B. C. CONRAD,
Notary Public.

Articles of agreement made and entered into this 10th day of May 1872, between Benjamin Rich of the county of Center, State of Pennsylvania of the one part and William Mullins, Sr., of the county of Greenbrier, State of West Virginia of the other part. Witnesseth that for the consideration hereinafter named the said Benjamin

Rich has this day leased or rented unto the said William Mullins
for the term of three years, a tract of one hundred thousand
809 acres, which said land, or so much thereof, as the said Wil-
liam Mullins may desire, he is to cultivate, and use for the said term of years and to have general possession of the remainder subject to the orders of the said Benjamin Rich, The said Benjamin Rich also agrees to make to the said William Mullins Se-*igner*, a good and sufficient deed or conveyance for two hundred acres of land to be laid off in one or more parcels, as the said William Mullins, so may chose out of either of the following surveys, viz. 100,000 acres known as the McClary tract 105,000 known as the Welch tract, 58,500 known as the Banks tract In consideration whereof the said William Mullins so this day sells to the said Benjamin Rich his possession or squatter's right to the land where he now lives and agrees to hold the same in possession for the said Benjamin Rich for the term of three years and to pay to the said Rich the sum of one dollar per year for the term of nineteen years commencing with his first possession of the said land and extending through a period of nineteen years and expiring three years hence the said William Mullins, Sr., having had the same in possession for the term of sixteen years and at the expiration of the said nineteen years the said Rich agrees to make the conveyance aforesaid. It is to be understood that the said William Mullins agrees and designates one hundred acres where he now lives as part of the two hundred to be conveyed to him by the said Rich Witness the following signatures and seals

J. WOODZELL [SEAL.]
Attorney-in-Fact for B. Rich
his
WILLIAM x MULLINS [SEAL.]
mark.

Received this 10th day of May, 1872, of Wm. Mullins, Sr., the sum of sixteen dollars, it being the amount of rent due on the within lease.

BENJAMIN RICH,
By his attorney, JAMES WOODZELL.

810 STATE OF WEST VIRGINIA, } *To wit:*
County of Webster, }

I, B. C. Conrad, a notary public for said county, do hereby certify that the foregoing depositions were duly taken, sworn to, and subscribed to before me at the time and place above stated, and that said witnesses, after their testimony had been reduced to writing, severally subscribed their names thereto, and that I am not interested in the result of the case.

Given under my hand this 14th day of September, 1886.

B. C. CONRAD,
Notary Public.

And on another day, to wit, on the 13th day of October, 1888, the following stipulation was filed in the office of the clerk of the said court:

In the Circuit Court of the United States for the District of West Virginia.

TAMLIN BRAXTON and Others
vs.
BENJ. RICH and Others.
} In Equity.

The defendants, by their counsel, having heretofore taken exception to the reading of certain depositions taken and filed by the complainants, and some of the witnesses whose depositions were excepted to having been produced and cross-examined by defendants' counsel, to wit, Ballard P. Conrad, Andrew McElwain, Geo. M. Sawyer, Jas. Woodzell, C. W. Benedum, R. C. Clevinger, and Samuel Hinkle, it is therefore stipulated by counsel for defendants that the exceptions to the depositions of said witnesses above named, and also to the deposition of Brown M. Yeager, the surveyor, be, and the same are hereby, withdrawn, and that the depositions-in-chief with the cross-examination of the above-named witnesses shall be read on the trial of said cause.

In witness whereof I have hereto set my hand.

C. BOGGESS, *Counsel.*

811 And on another day, to wit, on the 11th day of May, 1885, the following copy of lease was filed in the clerk's office of said court:

James Woodzell, Ag't for Benjamin Rich,
to
Jesse Hammons.
} Contract for 50 Acres of Land.

This agreement made the 2nd day of February, in the year 1881, between James Woodzell, agent for Benjamin Rich, of the one part, and Jesse Hammons, of the other part, witnesseth: That whereas, William Mullins, generally known as "Vandy Bill," entered into a tract of 100,000 acres of land known as the McClary tract, and made an improvement thereon at the forks of Williams river, about the year 1856, which improvement he sold to Jesse Hammons, party hereto, about the year 1869; and whereas; the said Jesse Hammons in the fall of 1878, sold or traded to Benjamin Rich, the owner of the 100,000 acres, the said possession and improvement, for which the said Benjamin Rich agreed to pay to the said Hammons fifty acres of land of the said 100,000 acres, and at the same time leased to the said Jesse Hammons the whole of the said 100,000 acres; now therefore, this agreement witnesseth: That in consideration of the above premises the said James Woodzell, as agent for the said Benjamin Rich agrees to and with the said Jesse Hammons that the said Benjamin Rich shall make to the said Jesse Hammons a deed for fifty acres of land to be laid off out of the said 100,000 acres, at such place and such shape as the said Jesse Hammons shall elect, either

in or out of the "Vandy Bill" improvement, except that the said fifty acres shall not be in length any more than twice its breadth, and shall not include the possession of any other person to whom the said Rich may have sold or promised land out of said 10,000 acres. The said deed to be made within two years from this date, and the said Jesse Hammons agrees to hold possession of the
812 said 100,000 acres and keep general oversight thereof for the benefit of the said Rich and pay to the said Rich the sum of one dollar per annum as he has heretofore done.

Witnesseth the following signatures and seals.

JAMES WOODZELL, [SEAL.]
Ag't for B. Rich.

his
JESSE x HAMMONS. [SEAL.]
mark.

STATE OF WEST VIRGINIA, } *To wit:*
County of Webster, }

I, B. P. Conrad, a notary public in and for the county of Webster, do certify that James Woodzell and Jesse Hammons, whose names are signed to the foregoing writing, bearing date on the 2nd day of February, 1881, have this day acknowledged the same before me in my said county.

Given under my hand this 2nd day of February, 1881.

B. P. CONRAD,
Notary Public.

WEST VIRGINIA:

WEBSTER COUNTY COURT,
CLERK'S OFFICE, *February 2nd*, 1881.

The foregoing contract between James Woodzell, agent for B. Rich and Jesse Hammons, together with the certificate of acknowledgement thereof thereto annexed, was this day admitted to record in said office.

Teste: B. P. CONRAD, *Clerk.*

STATE OF WEST VIRGINIA, } *To wit:*
Webster County, }

I, C. W. Benedum, clerk of the county court of said county, do hereby certify that the foregoing is a true copy from the rec-
813 ord in my office.

Given under my hand this 23rd day of April, 1885.

C. W. BENEDUM, *Clerk.*

Depositions for Defendants.

And on another day, to wit, on the — day of September, 1886, the following depositions were filed in the clerk's office of said court:

TAMLIN BRAXTON and MARY E., His Wife; WM. A. GORDON and Henrietta C., His Wife; Malinda C. Patton, Robert Stiles and Selia C., His Wife; E. J. Caperton, Allen Caperton, and Eliza Caperton, Plaintiffs,

against

BENJAMIN RICH, ABRAM WALTMAN, WALTER WOOD, RICHARD Wood, Edward R. Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Meyer, Jesse Hammons, and Adonijah Cougar, Defendants.

The plaintiffs in the above-entitled cause, now pending in the circuit court of the United States for the district of West Virginia, will take notice that the defendants herein will, on the eleventh day of September, 1886, at Webster C. H., in the county of Webster, West Virginia, and between the hours of six o'clock in the morning and six o'clock in the evening, proceed to take the depositions of Jesse Hammons, William Mullins, Thos. Meyer, Peter Hammons, Adonijah Cougar, A. J. Smith, N. G. Monday, Hugh Sharp, Chris. Baughman, Peter Barb, and M. N. Barb, and others, to be read as evidence in the above-named cause; and if from any cause the taking of said depositions shall not be commenced, or, being com-
814 menced, shall not be completed on that day, the taking thereof will be continued from time to time and place to place until the same shall be completed.

CALEB BOGGESS,
Counsel for Defendants.

I hereby accept for the plaintiffs due service of the above notice.

B. W. BYRNE,
Counsel for Plaintiffs.

UNITED STATES OF AMERICA,
District of West Virginia.

In the Circuit Court Thereof.

TAMLIN BRAXTON and Others
against
BENJAMIN RICH and Others.

The President of the United States of America to B. C. Conrad or T. B. Horan, of Webster county, West Virginia, Greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you commissioners and by these presents do give you or either of you full authority and power diligently to examine upon his corporal oath or affirmation, before you or either of you to be taken, Jesse Hammons as witness on behalf of the defendants in a certain cause now pending and undetermined in the circuit court of the United States for the district of West Virginia, wherein Tamlin Braxton and others are complainants and Benjamin Rich and others are defendants, touching the premises; and we do further empower you or either of you to examine said witnesses orally and to examine on the same behalf and in like manner any other per-

son or persons who may be produced as witnesses before you, and in all things authorized or required to be done under this commission full power and authority is given to either of you; and
815 we do hereby require you or either of you before whom such testimony may be taken to reduce the same to writing and to close it up under your (or either of your) hands and seals, directed to L. B. Dellicker, clerk circuit court United States, district of West Virginia, at Parkersburg, West Virginia, and that you return the same, when executed as above directed, annexed to this writ, with the title of the cause endorsed on the envelope, unto the said circuit court before the judges thereof with all convenient speed.

Witness the Honorable Morrison R. Waite, Chief Justice [SEAL.] of the United States, this 18th day of August, A. D. 1886.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

Pursuant to the annexed notice and under the authority of the commission of the circuit court of the United States for the district of West Virginia, and to me directed and hereto annexed, I proceeded, on the 11th day of September, 1886, at the court-house of the county of Webster, in the State of West Virginia, to take the depositions of the following witnesses produced by the defendants, to be read as evidence in a suit in equity pending in the said circuit court in which Tamlin Braxton and Mary E., his wife; William A. Gordon and Henrietta C., his wife; Malinda C. Patton, Robert Stiles and Lelia C., his wife; E. J. Caperton, Allen Caperton, and Ella Caperton are complainants and Benjamin Rich, Abram Waltman, Walter Wood, Richard Wood, Edward R. Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thomas Meyers, Jesse Hammons, and Adonijah H. Cougar are defendants.

Present: Caleb Boggess, counsel for defendants, and B. W. Byrne, counsel for plaintiffs.

816 *Depositions for Defendant-, Taken at Webster Court-House on the 11th Day of September*, 1886.

MOSES N. BARB, a witness on the behalf of the defendants, having been first duly cautioned and sworn to testify the whole truth and having been carefully examined, deposes and says:

Questions by the defendants:

1. State your age, residence, and occupation.

Ans. I am 34; reside on Gauley river, in Webster county, and am a farmer.

2. Please state how long you have resided where you now do.

Ans. I have been there going on seven years; will be seven years next April.

3. From what place did you move to where you now live?

Ans. I moved from off Leatherwood.

4. For how long had you lived on Leatherwood?

Ans. I was there from 1875 to 1878, and moved from Leatherwood to where I now live.

5. Please state on whose land or under whom you claimed during the period of your residence on Leatherwood and during the time you have resided on Gauley.

Ans. My father claimed under Benjamin Rich on Leatherwood, and I took possession under him, and I claim under said Rich where I now live.

6. State at what place or point on Leatherwood you formerly lived, and the point on Gauley river to which you moved and where you now live.

Ans. I lived on Leatherwood, about two miles and a half up from the mouth of it. I now live on Gauley river, about two miles
817 and a half above the mouth of Turkey creek.

7. About how far do you live from Addison?

Ans. About eight miles.

8. State how long your father had lived on Leatherwood before you took possession.

Ans. I don't know exactly; I think he was there about eight years.

9. State how long before you took possession did your father leave the place on Leatherwood.

Ans. One day. I took possession the next day after he left.

Cross-examined by counsel for plaintiffs:

1. What is the nature of your contract with Rich with reference to your possession on Gauley—whether written or verbal?

Ans. It was written after I went there.

2. What is the date of the contract?

Ans. That is more than I can tell you just now.

PETER B. BARB, a witness on behalf of the defendants, having been first duly cautioned and sworn to testify the whole truth and having been carefully examined, deposes and says:

Question- by def't-:

1. State your age, residence, and occupation.

Ans. I am 58; reside in Randolph county, and am a stone mason.

2. State whether at any time you lived on and occupied land in the 58,500-acre tract known as the Banks tract after the year 1870.

Ans. I did.

3. Please state under who you claimed and how long you occupied it under such claim.

Ans. I was in possession of Mr. Rich's land from 1870 to the beginning of 1875. I claimed under Benjamin Rich.

818 4. State whether, during the period you have named, you resided with your family on said tract?

Ans. I did.

5. State, if you know, who succeeded you in the occupation and possession of the land, and how long after you left it.

Ans. My son, Napoleon Barb. I left him in possession. He took possession when I left it.

6. State how long, if you know how long, he has continued in the possession of the land.

Ans. As near as I can tell, about eleven years.

Cross-examined by plaintiff:

1. Please state at what point you claim to have occupied the 58,500-acre tract claimed by Benjamin Rich.

Ans. On Leatherwood, a branch of Elk river, about two miles and a half from its mouth.

2. Please state the boundary of the 58,500-acre tract.

Ans. I can't give the full boundary. I carried chain on the north line from Sand run to Whitaker falls, on Elk river. We crossed the river four times.

3. State whether you found any marked corner or line trees on that line.

Ans. We commenced at a stump, said to be a corner, and we ran from there to the Whitaker falls. I didn't see any marked corner or line trees. I wasn't looking for any; I was carrying chain.

4. You say you occupied land on Leatherwood—lived on it with your family from 1870 up to the beginning of 1875. Whose land was it that you was occupying at that time, and under whom did you take possession of the land?

Ans. In the year 1867, I knew nothing of the title of the land at that time. I took possession of Bernard Mollohan in 1867;
819 I took the possession of the land under Bernard Mollohan; I went there under contract with Bernard Mollohan.

5. Is the land that you say you took possession of in 1867 under Bernard Mollohan the same land that you occupied up to the time of leaving there in 1875?

Ans. It is the same land.

6. State whether or not you paid Bernard Mollohan any rent during the time you occupied this land.

Ans. The rent I paid in work on the place.

7. Is the land you say you left in possession of your son when you left there the same land that you leased of Bernard Mollohan in 1867?

Ans. It is the same land that I left him on.

8. State whether or not you ever improved by clearing and fencing, or otherwise, any land on the 58,500-acre survey referred to outside of the boundaries of the land you leased of Bernard Mollohan.

Ans. I cleared none on the outside of that.

9. State, if you know, whether your son, after you left the land leased of Mollohan, ever made any improvements outside of the Mollohan tract during the time he lived on it.

Ans. I don't know.

10. What do you mean by saying that you occupied and had possession of Benj. Rich's 58,500 survey?

Ans. I mean this: I was inside of the boundary and he said it was his and gave me possession of the whole of it. I was to look

after it and see that no timber was cut and destroyed and that no one moved in onto it.

11. How did he give you possession of it, and in what manner did you take possession of it?

820 Ans. By a verbal lease; by looking over the land and attending to it and seeing that no timber was cut and destroyed and keeping persons off of it.

12. Do you mean to say that you continued to hold possession under Bernard Mollohan all the time that you lived on the land you first leased of him?

Ans. I mean to say that under that particular part I leased of Mollohan I held under him and no charge was made of it. Neither Mollohan told me to get off nor Rich didn't tell me to get off of it. Rich said it was all his and that I should take possession of all of it; even what Mollohan had given me possession of Rich said was his.

13. State, if you know, what was the size of the Mollohan tract leased by you of him.

Ans. I can't state the exact boundary of his survey; it is from two to four hundred acres; I can't tell which.

Examination-in-chief resumed.

By def't-:

7. State whether after 1870, and your arrangement with Mr. Rich, did the said Mollohan know of your possession and claim under him (Rich).

Ans. I told him about it.

8. State whether you paid any rent to said Mollohan after 1870.

Ans. I paid no rent.

Examination on X examination resumed by counsel for plaintiff:

14. Do you mean to say that you made no farther improvements on the land for Mollohan after 1870?

Ans. I don't think that I made any improvements after that.

821 Further this deponent saith not.

PETER B. BARB.

JESSE HAMMONS, a witness on behalf of the defendants, having been first duly cautioned and sworn to testify the whole truth and having been carefully examined, deposes and says:

Question- by defendants:

1. State your age, residence, and occupation.

Ans. I am 53 years old; reside on Williams river; I farm some and try to raise stock.

2. How long have you resided on Williams river?

Ans. I think about 23 years.

3. Please designate the place on Williams river to which you refer.

Ans. I am living about two miles and a half above the forks, at what I call the Aldridge place. I live on the main or north fork of the river, and on the left-hand side as you go up.

4. Please state where you have lived since the fall of 1869.

Ans. I think I have lived on Williams river, where I live now, and at a place at the forks of the river about two miles and a half below it all the time except two years that I lived elsewhere than on said river, which move have been within that period. I can't be certain, but I have lived there at these two places for the last twelve years, part of the time at one place and part of the time at the other place. I went from the lower place to the place where I now live about four years ago, and I had gone to the lower place from where I now live about three years before.

5. State how and under whom you claimed the lands at these two places whilst you were living there?

822 Ans. For the last twelve or thirteen years I have claimed it under Mr. Rich; before that I claimed it from a hunter's possession.

5. State whether during all this time you cultivated the lands at these places mentioned.

Ans. Yes, sir; I was at work on both places.

6. State whether at any time after you took possession or claimed under Mr. Rich one Mark Hammons was in possession of either of these places; if so, state when and under what circumstances he went into possession.

Ans. I put Ma-k Hammons into possession of one of the places to raise one crop one year, but can't remember whether it was before or after that time; this was the lower place.

7. Did you ever put him in possession but once or did he ever take possession but once.

Ans. Not that I recollect of.

8. How long did he remain in possession?

Ans. I don't know whether he remained more than one year or not—don't recollect. I don't think he staid two years.

9. Did he move onto the place with his family?

Ans. Yes, sir; I think so.

10. What relationship, if any, did he bear to you?

Ans. He passed for my brother.

11. Do you know who next lived on that place after your brother, Mark Hammons, moved off?

Ans. I think Mr. M. J. Stillner.

12. Did said Stillner ever occupy that place but the one time you have named?

Ans. No, sir; not that I recollect of.

823 Cross-examination by counsel for plaintiff-:

1st question by same. State, if you know, whether William Mullins ever lived on the place at the forks of the river; and, if so, at what time.

Ans. Yes, sir; I don't recollect. I think about twelve years ago.

2. You state you put your brother in possession at the forks of the river, but you do not remember when it was. Was it before or after William Mullins lived at the place?

Ans. It was after he moved away; the same spring.

3. You say that you claim to hold possession of lands on Williams' river under Benjamin Rich. What kind of contract did you have with Rich—whether written or verbal?

Ans. I had one verbal contract and then one written contract.

4. At what time did you make the verbal contract with Rich?

Ans. I think it must have been twelve or thirteen years ago.

5. At what time did you make the written contract referred to?

Ans. I don't recollect how long it has been, but since that.

6. Have you got that written contract in your possession?

Ans. Yes, sir.

7. Will you produce it?

Ans. I can't to-day; it is too far away.

8. Was the contract referred to recorded in the clerk's office of this county?

Ans. Yes, sir; I think it was.

9. Will you look at the record here shown you and state whether it is the contract referred to?

Ans. I think it is the same contract, a copy of which I make part of my answer, marked "B X."

824 9. State whether or not R. C. Clevinger ever *ever* lived on the place at the forks of W'ms river.

Ans. I think he did, the same year that Mr. Stillner lived there.

10. Will you be kind enough to state who next occupied it after Clevinger and Stillner left it?

Ans. I think myself and Peter Hammons next occupied it.

11. How long did you and Peter Hammons continue to occupy it?

Ans. Up to the present time.

12. I understood you to say in your answer to a former question that you moved four years ago to where you now live; is that true?

Ans. That is true, to the best of my recollection. I raise grass on the lower place and grain on the upper place.

Question by the defendant-:

12. State whether there are any other improvements on the 100,000-acres tract referred to in the deed exhibited with your answer, which have been made out and occupied by persons claiming under the Rich title; if so, state when, where, and by whom so made or occupied.

Ans. Yes; there is one on the south side of the river, about half way from where I live to the forks of the river. There is another improvement close down to the middle fork of W'ms river, on the left-hand side of the river. Adonijah Cogar made both of said improvements under Benjamin Rich, Peter Hammons, and Cornelius Hammons, now occupying them, claiming under Benjamin Rich. The improvements have been made five or six years, and they have been in possession hardly a year, but had been occupied by others since improved.

825 Question- by counsel for plaintiff-:

13. Is or is not the section of country of which the forks of W'ms river is situated an extensive wilderness?

Ans. Yes; a good deal of what I call wilderness.

14. How far is it from that point down the river to any settlement?

Ans. About six miles.

15. How far is it up the river from the forks to a settlement?

Ans. They call it 12 miles; 14 or 15 miles from the forks of the river.

16. How far is it south to any settlement?

Ans. It must be 25 or 30 miles.

17. How far would it be in a north direction from the forks of the river to the settlement?

Ans. Six or seven miles to its edge.

18. State what kind of roads lead to the forks of W'ms river.

Ans. Little paths with the brush hacked out, and logs—a heap of them laying—to get over.

19. Can a man ride in from any direction on horseback to the forks of W'ms river?

Ans. They can ride in up the river and up Turkey creek and go over.

20. Did you ever see anybody ride horseback all the way to the forks of W'ms river?

Ans. Yes, sir; I have seen them ride all the way; some lead most of the way.

21. Is or is not that settlement about you principally occupied only by hunters?

826 Ans. They used to hunt there a good deal, but those there now don't hunt a great deal. There is not much there to hunt for now.

Further this deponent saith not.

his
JESSE x HAMMONS.
mark.

This is the copy of contract filed with the deposition of Jesse Hammons, marked "B X":

James Woodzell, Ag't for Benjamin Rich, to Jesse Hammons. } Contract for 50 Acres of Land.

This agreement made the 2d day of February in the year 1881, between James Woodzell agent for Benjamin Rich, of the one part and Jesse Hammons of the other part. Witnesseth, That whereas William Mullins generally known as "Vandy Bill" entered into a tract of 100,000 acres of land known as the McCleary tract and made an improvement thereon, at the forks of Williams river, about the

year 1856, which improvement he sold to Jesse Hammons party hereto about the year 1869; and whereas the said Jesse Hammons in the fall of 1878 sold or traded to Benjamin Rich, the owner of the 100,000 acres, the said possession and improvement for which the said Rich agreed to pay to the said Hammons fifty acres of land of the said 100,000 acres, and at the same time leased to the said Jesse Hammons the whole of the said 100,000 acres. Now, therefore this agreement witnesseth, that in consideration of the above premises, the said James Woodzell as agent for the said Benjamin Rich, agrees to and with the said Jesse Hammons that the said Benjamin Rich shall make to the said Jesse Hammons a
827 deed for fifty acres of land to be laid off out of the said 100,000 acres at such place and such shape as the said Jesse Hammons shall elect either in or out of the "Vandy Bill" improvement, except that the said fifty acres shall not be in length more than twice its breadth and shall not include the possession of any other person to whom the said Rich may have sold or promised land out of said 100,000 acres. The said deed to be made within two years from this date; and the said Jesse Hammons agrees to hold possession of the said 100,000 acres and keep a general oversight thereof for the benefit of the said Rich and pay to the said Rich the sum of one dollar per annum as he has heretofore done.

Witness the following signatures and seals.

JAMES WOODZELL, [SEAL.]
Ag't for B. Rich.

his
JESSE x HAMMONS. [SEAL.]
mark.

STATE OF WEST VIRGINIA, } *To wit:*
County of Webster, }

I, B. P. Conrad, a notary public in and for the county of Webster, do certify that James Woodzell and Jesse Hammons, whose names are signed to the foregoing writing, bearing date on the 2d day of February, 1881, have this day acknowledged the same before me in my said county.

Given under my hand this 2d day of February, 1881.

B. P. CONRAD, *Not. Pub.*

WEST VIRGINIA:

WEBSTER COUNTY COURT,
CLERK'S OFFICE, *February* 2*d*, 1881.

The foregoing contract between James Woodzell, agent for B. Rich, and Jesse Hammons, together with the certificate of acknowledgement thereof thereto annexed, was this day admitted to record in said office.

Teste: B. P. CONRAD, *Clerk.*

828 STATE OF WEST VIRGINIA, } ss:
Webster County, }

I, C. W. Benedum, clerk of Webster county court, do certify that the writing is a true copy from the record in my office.

Witness my hand this 13th September, 1886.

C. W. BENEDUM, *Clerk.*

MOSES N. BARB recalled by counsel for plaintiff- and cross-examination resumed:

Question- by same:

3. Have you ascertained the date of your contract and do you have it in your possession? And, if so, please produce it.

Ans. Yes, sir; I have it in my possession; it bears date October the 6th, 1881.

4. Have you occupied the land continuously since that date?

Ans. I have.

5. Where did you say you moved from?

Ans. From Leatherwood.

6. Whose land did you reside on when you lived on Leatherwood?

Ans. It was said to be Bernard Mollohan's; he claimed it.

7. How did you come into possession of the land on Leatherwood?

Ans. I took possession when father left there, under him.

8. Who did your father get the possession from?

Ans. I don't know that I can answer that.

9. How much land had Bernard Mollohan at the place you lived on?

Ans. I don't know how much he did own.

10. Do you know who occupied the land after you left it and who occupies it now?

829 Ans. Dick Hammons went onto it a while after I left; no one occupies it now.

11. How long since Hammons left it?

Ans. That is more than I can tell you.

Question- by defendants:

10. Do you know whether the said Mollohan ever owned or had title to any land at the place you refer to on Leatherwood?

Ans. I don't know anything about that at all. I don't know anything about his title.

11. You have produced your written contract in relation to your occupancy and possession referred to in your cross-examination. Will you please file it as a part of your deposition or a copy of it?

Ans. I will do so and have it marked "B."

Further this deponent saith not.

his
MOSES N. x BARB.
mark.

This is the written contract referred to and filed with the deposition of Moses N. Barb as part thereof, marked "B."—B. C. Conrad, com'r.

It is understood that nothing in the within document will prevent Rich and his partners from selling or leasing any portion of the tracts of land referred to which does not interfere with the one hundred acres where Barb lives.

his
MOSES NAPOLEON x BARB.
mark.

It is understood that the deed as mentioned herein shall be made by Rich and his partners to Barb without any further consideration than what is mentioned herein.

STUART WOODS.

830 OCTOBER THE 6TH, 1881.

Whereas Peter Barb entered onto land on Leatherwood creek in or about the year 1867, which land was part of that purchased by Benjamin Rich at tax sales in Webster county or of parties who so purchased it, and soon thereafter it was agreed between said Barb and Rich leasing to said Barb the various adjacent tracts owned by said Rich and his partners, and in particular the Banks tract of fifty-eight thousand five hundred acres, and the Welch and Hyland tract of one hundred and five thousand acres or sixty-five thousand and odd acres; and whereas the said Barb removed from the said improvement in or about the year 1875, and his son, Moses Napoleon Barb, immediately thereafter moved onto the said improvement and continued without interruption the tenancy and occupation of the said tracts of land under Rich and his associates:

Now, therefore, in consideration of the premises, it is agreed between the said Moses Napoleon Barb and Stuart Wood, for himself and as agent for said Rich and his associates, and in further consideration of one dollar paid by said Barb to said Wood, receipt of which is hereby acknowledged, that the said Barb having in the year 1878 removed from Leatherwood to Gauley, being still and having continuously been on the lands of said Rich and his partners, shall continue in peaceable possession as at present, and shall as heretofore and at present remain in tenancy of the said tracts of land before alluded to and described for the space of five years from date, and exercise a general oversight of the same and inform the owners of any spoliation or encroachment on them, and that at the expiration of said term of five years he shall receive a deed for one hundred acres of land where he now resides.

his
MOSES NAPOLEON x BARB.
mark.

STUART WOOD.

831 ADONIJAH H. COGAR, a witness on behalf of the defendants, having been first duly cautioned and sworn to testify the whole truth and having been carefully examined, deposes and says:

Question by defendants:

1. State your age, residence, and occupation.

Ans. I am about 40 years of age. I live on Gauley river, in Webster county. I am a farmer.

2. State whether you ever improved or occupied any part of the McClary tract of 100,000 acres, in this county; if so, when, where, and under whom was such improvement made and held.

Ans. I reckon I have, on W'ms river, about nine or ten years ago. I got a lease from Mr. Jesse Hammons. I was then pretty much all the time, off and on. I made improvements there where I lived about eight years ago. I made the improvement under Jesse Hammons.

3. State what was the character of the improvement you made on the land in controversy.

Ans. Clearing the ground and cultivating it.

4. Did you erect any building or buildings on it?

Ans. I built two cabins on it.

5. State how the cabins were used, whether for cabins or what.

Ans. They were used to live in.

6. State where Jesse Hammons was living at the time you took possession under him as aforesaid, and for whom was he acting in leasing the lands to you.

Ans. He was living on W'ms river, at the three forks, I believe, about a half mile below the forks. I think he was acting
832 under Mr. Benj. Rich. Peter Hammons lives at the forks now, in the same house that Jesse Hammons lived in at the time he put me on the land.

7. State how long these improvements made by you as above stated have been occupied and cultivated.

Ans. About eight years, I guess.

8. State who occupied them and under whom they claim.

Ans. I occupied them first; I let Jesse Hammons have them when I left there; I think he let his sons have them; they was still in possession about a week ago.

9. State if, at any time since you made the improvements and took possession, they or either of them have been vacated or abandoned.

Ans. No, sir; not that I recollect of.

10. State how long since you let Jesse Hammons have them.

Ans. It has been about six months.

Cross-examination by counsel for plaintiffs:

1. Mr. Cogar, will you please state what year you made the improvement on Williams river referred to?

Ans. I think in 1877.

2. What time of year did you make it in?

Ans. I couldn't say exactly; in the fall of the year, about October or November.

3. Are you certain that it was in 1877?

Ans. I ain't right certain, but I think to the best of my knowledge it was.

4. How much land did you clear the first year?

Ans. About an acre and a half; I guessed at it; I didn't measure it.

833 5. Did you build a house on it; if so, when?

Ans. I built a house in October or November in the same year I went there.

6. Please describe the house as to the size of it and material—whether of brick, frame, or logs.

Ans. A log house, about 14 x 16 feet—14 one way and 16 the other. It was hardly one story, I reckon. It wasn't more than seven or eight feet high.

7. Did it have a chimney; and, if so, of what made?

Ans. It had not much chimney—a kind of a rough concern, partly of rock and partly of wood and clay.

8. When did you first move away from that place?

Ans. I don't exactly know *know*.

9. When did you return to it the second time?

Ans. I couldn't hardly tell you that.

10. When did you next move away from it?

Ans. Last March, I guess.

11. How long was you away from the improvement the first time you left it until you went back again?

Ans. I was away about ten months.

12. What size is the improvement on that place, or was it, when you was on it last?

Ans. About three or four acres, I guess.

By defendant-:

11. State, if you please, where you moved to when you first left the improvement last named.

Ans. I moved to Gauley, below where I live now; about a half a mile from where I live now.

12. How — was it from the improvement you moved from?

Ans. Some ten or eleven miles, I suppose.

834 13. Where was the second improvement you spoke of in your examination-in-chief situated with reference to the first one?

Ans. It was above the forks a little over a mile, I suppose, on W'ms river.

14. Who was occupying the second one of these improvements during the time you was occupying the first one?

Ans. I sold it to Jesse Hammons, and he let some of his boys have it, I believe.

Further this deponent saith not.

ADONIJAH H. COGAR.

GEORGE M. MCFARLANE, a witness on behalf of the defendants, having been first duly cautioned and sworn to testify the whole truth and having been carefully examined, deposes and says:

Question- by defendant-:

1. State your age, residence, and occupation.

Ans. I was 45 years the 18th of last April. I live in Nicholas county; am a farmer.

2. State if you know William Mullins, Jr.

Ans. I do.

3. How long have you known him?

Ans. About four years.

4. State whether you know and what you know of his occupancy of any land within the tract known as the McClary tract in controversy in this suit.

Ans. I know, according to Mr. Yeager's running, a piece of land in that survey. I rented of one Mullins' tenants that piece of land, and I paid him ten dollars a year rent for it.

5. State under whom Mullins claimed the land and how he claimed it.

835 Ans. He claimed it under Mr. Benjamin Rich by having a lease to the same.

6. State when you first knew about his occupation of that land under that claim.

Ans. About the 1st of May, 1882.

7. Where was this improvement with reference to the McClary tract?

Ans. It was situated on Cranberry ridge, on the head of a ravine that runs into Laurel creek—Laurel creek runs into Gauley—and within about two hundred yards of where Yeager ran the line of the McClary tract.

8. How long did the improvement of Mullins appear to have been made?

The foregoing question objected to by plaintiffs on the ground that any answer to the question would be improper.

Ans. From all appearance it looked like it might have been made from two to three years when I first saw it in 1882.

Further this deponent saith not.

GEORGE M. McFARLANE.

CHRISTOPHER BAUGHMAN, a witness on behalf of the defendants, having been first duly cautioned and sworn to testify the whole truth and having been carefully examined, deposes and says:

Question- by defendants:

1. State your age, residence, and occupation.

Ans. I am 30 years of age; reside on Gauley river, in Webster county, and am a farmer.

2. Please state whether you have ever resided on the lands of the

defendants known as the Banks 58,500-acre tract and occupied
836 a part there, claiming title under them; if so, state for how long.

Ans. I think in the year 1877 I went upon the south side of Gauley river, two miles above Turkey creek, and went to work under Rich, clearing, building, fencing, and farming.

3. State how long you continued after you went there in 1877 in such employment under Rich.

Ans. I am still there yet, expecting to live there.

4. State where you have been living since you went there in 1877.

Ans. At the same place, two miles above Turkey creek. I have been living there all the time since I went there first and still live there.

Examination by counsel for plaintiffs:

1. You state that you occupy a piece of land on the tract of 58,500 acres known as the Banks tract. Please state how you know that you are on the Banks tract, and whether you know the boundaries of Banks tract of 58,500 acres.

Ans. All I know is by other people's talk. I don't know the boundaries of the Banks tract.

2. What Banks is it that gives it the name to that tract?

Ans. I couldn't tell you.

3. Who told you you live on the Banks tract?

Ans. Benjamin Rich and others.

4. Do you live in any other large tract of land except the Banks tract?

Ans. No, sir.

5. Did Mr. Rich tell you where the Messingbird tract was?

Ans. No, sir; I don't think he did.

6. Did Mr. Rich ever tell you that you lived on the Welch tract of 105,000 acres?

837 Ans. No; he didn't.

7. Did Mr. Rich ever tell you that you lived on the McClary tract of 100,000 acres?

Ans. No; he never told me that, neither.

—. If the Messingbird tract is properly described on the surveyor's map and the streams are properly laid down, would your improvement and house spoken of be on that tract?

Ans. I think it would.

8. If the 105,000 acres known as the Welch survey is properly described on the surveyor's map and the streams are properly laid down, would your improvement and houses spoken of be on that tract?

Ans. I don't think it would.

9. How much land did Benjamin Rich lease to you, and on what terms and conditions?

Ans. He leased me on the Banks survey 58,500 acres; that is all. I was to pay him one dollar a year and keep all trespassers off.

Further deponent saith not.

CHRISTOPHER BAUGHMAN.

I do hereby certify that the foregoing depositions were taken and reduced to writing by me after said witnesses having been cautioned, sworn, and examined as in the above caption stated at the time and place in said notice and adjournments above stated, and that said depositions were severally subscribed by said witnesses after their testimony had been reduced to writing, and that I am not of counsel or attorney to either of the parties nor interested in the result of the cause.

Given under my hand this 14th day of September, 1886.

B. C. CONRAD,
Commissioner of the Circuit Court of the United States for the District of West Virginia.

838 And on another day, to wit, on the 27th day of September, 1886, the following deposition was filed in said clerk's office:

The deposition of Patrick F. Duffey, taken before me, the undersigned, Peter Fontaine, a commissioner of the district court of the United States for the district of West Virginia, pursuant to the annexed notice and commission, at the office of the auditor of the State of West Virginia, in the city of Charleston, in said State, on the 24th day of September, 1886, beginning at the hour of 11 o'clock a. m., to be read and used as evidence on behalf of the defendants in a certain cause now pending and undetermined in the circuit court of the United States for the district of West Virginia, wherein Tamlin Braxton and others are complainants and Benjamin Rich and others are defendants.

Present: Caleb Boggess, counsel for defendants, and B. W. Byrne, Esq., and E. L. Buttrick, Esq., counsel for the complainants.

PATRICK F. DUFFEY, a witness of lawful age, having been by me first duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, answered and deposed as follows:

1st question by CALEB BOGGESS, Esq. State your age and occupation.

Answer. I am 45 years old, and my occupation is that of auditor of the State of West Virginia.

2d by same. Please examine the books and records in your said office relating to the lands in Webster county for the years from 1870 to 1885, both inclusive, and state what is shown therein,
839 if anything, in relation to a tract of 100,000 acres of land on Gauley and Williams rivers assessed for taxation in the names of Benjamin Rich, Thornton Conrow, or Walter Wood, or any or either of them, its assessment with State taxes, the payment thereof or delinquency.

Answer. I have made such examination, and I herewith file my official certificate, which contains what the books and records of the auditor's office disclose in relation to said tract of land, and make it my answer to the question asked me, marked as Exhibit P. F. D. No. 1.

3d by same. Please examine the books and records in your said office relating to the lands in Webster county for the years from 1870 to 1885, both inclusive, and state what is shown therein, if anything, in relation to a tract of 58,500 acres of land on Gauley and Williams rivers assessed for taxation in the names of Benjamin Rich or B. Rich and others, or either of them, its assessment with State taxes, the payment thereof or delinquency.

Answer. I have made such examination, and I herewith file my official certificate, which contains what the books and records of the auditor's office disclose in relation to said tract of land, and make it my answer to the question asked me, marked as Exhibit P. F. D. No. 2.

And further this deponent sayeth not.

P. F. DUFFY.

840 No other witnesses appearing in the said cause, the taking of these depositions is now closed on this 24th day of September, 1886.

PETER FONTAINE,
Com'r D. C. U. S., D. W. Va.

UNITED STATES OF AMERICA, *District of West Virginia,* } *To wit:*

I, Peter Fontaine, a commissioner of the district court of the United States for the district of West Virginia and the same Peter Fontaine who is named in the commission hereto annexed, do hereby certify that the foregoing deposition of Patrick F. Duffey was duly taken, sworn to, and subscribed by said witness before me at the time and place mentioned in the caption to said deposition, and that the same was reduced to writing by me in the presence of said witness at said time and place and before the hour of 6 o'clock p. m. of said 24th day of September, 1886; and I further certify that I am not counsel or attorney for or related to any party to the said cause mentioned in the said caption, and that I am not in anywise interested in the said cause.

Given under my hand and seal as commissioner as aforesaid this 24th day of September, 1886.

PETER FONTAINE, [SEAL.]
Commissioner of the District Court of the United States for the District of West Virginia.

841 P. F. D. No. 1. P. F., Com'r, &c.

I, Patrick F. Duffy, auditor of the State of West Virginia, have caused a careful examination to be made of the books and records of my office and do certify that I find that a tract of 100,000 acres of land was returned on the assessor's book of the county of Webster and charged with the State taxes thereon for each of the years 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, and 1885 and described as lying on Gauley and Wil-

liams river-; that for the year 1870 it was entered in the name of Fleury, Viscount Clifford; that for the year 1871 it was entered in the name of Benjamin Rich, with a marginal note thereon, "Transferred from De Fleury;" that for the years 1872, 1873, and 1874 it was entered in the name of Benjamin Rich and others; that for the years 1875, 1876, 1877, and 1878 in the name of Benjamin Rich, and in the years 1879, 1880, 1881, 1882, 1883, 1884, and 1885 in the name of B. Rich and Walter Wood; that on the said book for the year 1879 and opposite the said entry there is a marginal note as follows: "Transferred from T. Conrow to Wood," and on the book for the — 1881, opposite said entry, there is a marginal note as follows: "Back taxes for five years raised to the assessment of 1875."

That for each of the said years, except the years 1879, 1880, 1884, and 1885, the said tract of land was returned delinquent for
842 the non-payment of taxes thereon for said years, but was not delinquent for either of said four years last named.

I further certify that for the said taxes delinquent for the years 1870 the said tract of land was sold by the sheriff and purchased by Benjamin Rich and T. Conrow; that the said delinquent taxes for the years 1871 *was* paid into this office by B. Rich on the 9th of June, 1873, and the said land redeemed therefrom; that the said delinquent taxes due for the year 1872 were paid into this office on the 9th day of October, 1873, and the said land redeemed therefrom by the said B. Rich; that the said delinquent taxes due on said tract for the years 1873 and 1874 were paid into this office on the 29th Sept., 1875, by said B. Rich and the said land redeemed therefrom; that the said delinquent taxes due on said land for the years 1875, 1876, 1877, and 1878 were certified by the auditor to the sheriff of Webster county for sale in the year 1879 and the amount — paid to said sheriff before said sale and said lands thereby released from said delinquency.

That said delinquent taxes due for the years 1881 and 1882 were in like manner paid to the said sheriff of Webster county and the said land redeemed therefrom; that the said delinquent taxes due on said land for the year 1883 were certified to the sheriff of Webster county with said land for sale and the same was sold and purchased by Walter Wood for the amount of said taxes.

I further certify that it appears from the records of this office that no part of the State taxes remains unpaid on said tract of
843 land from the said B. Rich, Walter Wood, Thornton Conrow, or either of them for either of said years from 1870 to 1885, both included.

Given under my hand this 24th day of Sept., 1886.

P. F. DUFFY, *Auditor.*

(P. F. D. No. 2.) P. F., Com'r, &c.

I, Patrick F. Duffy, auditor of the State of West Virginia, upon a careful examination of the books and records of my said office do hereby certify that a tract of 58,500 acres of land is entered upon the assessor's books of the county of Webster for each of the years

from 1872 to 1885, both inclusive, and charged with the State taxes thereon, except for the year 1880, for which last-named year the said tract of land is not entered and charged on said books, and is described on said book for each of said years 1877, 1878, and 1879 as lying on Gauley and Elk rivers, and for each of said years from 1881 to 1885, inclusive, as lying on Gauley and Williams river-, and that for each of said years from 1872 to 1885, inclusive, the said tract of land was returned delinquent for the non-payment of taxes; that on said book for the year 1881 there is a marginal note as follows, viz: "Entered and back taxes for 1879 & 1880, and raised to assessment of 1875."

I further certify that the said tract was for the year 1872 entered on said book in the name of B. Rich, for the year 1873
844 in the name of B. Rich and others, for the years 1874 to 1879, inclusive, and from 1881 to 1885, inclusive, in the name of B. Rich.

I further certify that said land was redeemed from delinquency for the year 1872 by payment of the amount of taxes, &c., due thereon on the 9th Oct., 1873, and that it was redeemed from delinquency for the years 1873 and 1874 by payment of the amount due thereon on the 29th Sept., 1875; that said tract of land was sold by the sheriff of Webster county on the 25th Nov., 1879, for the taxes due thereon for the years 1875, 1876, 1877, and 1878, and purchased by the said sheriff for the State, and were redeemed from the State therefrom on the 26th day of November, 1880. The said tract of land was redeemed from the delinquency thereof for the year 1879 by payment of the amount due thereon; that it was redeemed from the delinquency thereof for the years 1881 and 1882 by payment to the said sheriff of Webster county the amount due thereon in the year 1882 and before sale thereof; that the said tract of land was in November, 1885, sold by the said sheriff of Webster county for the delinquent taxes thereon for the years 1880 and 1884 and purchased by Walter Wood.

I further certify all the State taxes charged on said tract of land or assessed against the said B. Rich or B. Rich and others have been paid and no part thereof remains unpaid.

Given under my hand this 24th day of September, 1886.

P. F. DUFFY, *Auditor.*

[Endorsed:] Tamlin Braxton *et als. vs* B. Rich & others. Deposition of P. F. Duffy, auditor.

845 Exhibit P. F. D. No. 2 filed with the deposition of Patrick F. Duffy before me the 24th day of September, 1886, in the cause of Tamlin Braxton *et al. vs.* Benjamin Rich *et al.*

Teste: PETER FONTAINE,
Com'r D. C.U. S., D. W. Va.

TAMLIN BRAXTON and MARY E., His Wife; WM. A. GORDON and Henrietta C., His Wife; Malinda C. Patton, Robert Styles and Lelia C., His Wife; E. J. Caperton, Allen Caperton, and Ella Caperton, Complainants,

against

BENJAMIN RICH, ABRAM WALTMAN, WALTER WOOD, RICHARD Wood, Edward R. Wood, Ferdinand F. Sharp, D. S. Robinson, Andrew Wayne, Thos. Meyers, Jesse Hammons, and Adonijah Cogar, Defendants.

The complainants in the above-entitled cause in equity, now pending in the circuit court of the United States for the district of West Virginia, will take notice that the defendants in said cause will on the 24th day of September, 1886, at the office of the auditor of the State of West Virginia, between the hours of six o'clock a. m. and six o'clock p. m., take the depositions of P. F. Duffy and others, to be read as evidence in the above-entitled cause, and if from any cause the taking of said depositions should not be commenced, or, being commenced, should not be completed on that day, the taking thereof will be continued from time to time and place to place until the same are completed.

CALEB BOGGESS,
Counsel for Defendants.

846 UNITED STATES OF AMERICA,
District of West Virginia.

In the Circuit Court Thereof.

TAMLIN BRAXTON and Others
against
BENJAMIN RICH and Others.

The President of the United States of America to Joseph Ruffner or Peter Fontaine, of the city of Charleston, Kanawha county, West Virginia, Greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you commissioners and by these presents do give you or either of you full authority and power diligently to examine, upon his corporal oath or affirmation, before you or either of you to be taken, Patrick F. Duffy, as witness on behalf of the defendants in a certain cause, now pending and undetermined in the circuit court of the United States for the district of West Virginia, wherein Tamlin Braxton and others are complainants and Benjamin Rich and others are defendants, touching the premises; and we do further empower you or either of you to examine said witness orally, and to examine on the same behalf and in like manner any other person or persons who may be produced as witnesses before you, and in all things authorized or required to be done under this commission full power and authority is given to either of you; and we do hereby require you or either of you before whom such testimony may be taken to reduce the same to writing, and to

close it up under your (or either of your) hands and seals, directed to L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, at Parkersburg, West Virginia, and that you return the same, when executed as above directed, annexed to this writ, with the title of the cause endorsed on
847 the envelope, unto the said circuit court, before the judges thereof, with all convenient speed.

[SEAL.] Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 18th day of August, A. D. 1886.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

And on another day, to wit, on the 26th of September, 1889, the following orders were made and entered of record, to wit:

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Equity.

The separate answer of Benjamin Rich to the original bill of complaint in this cause having been filed in the office of the clerk of this court on the 6th day of December, 1882, it is ordered to be made a part of the record in this cause, and thereupon the plaintiffs reply generally to said answer.

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.* } In Equity.

This day the defendant S. Morris Waln, Esquire, the counsel and attorney for himself and Howard F. Conrow, who are the administrators *de bonis non* and trustees of the estate of Thornton Conrow, deceased, with the will of said Conrow annexed, and also counsel for the other children and heirs-at-law and devisees of the said Thornton Conrow, deceased, moved the court to set aside the decree rendered by default against the said defendants herein named on a former day of this court, and, there being no objection thereto by the plaintiffs, it is adjudged, ordered, and decreed by the court that the said decree be, and the same is hereby, set aside.

848 TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.* } In Equity.

This day the defendants S. Morris Waln and Howard F. Conrow, administrators *de bonis non* and trustees of estate of Thornton Conrow, deceased, with the will annexed of said Conrow, and Alford Thornton Conrow and Anna Alida Levis, late Anna Alida Conrow, survivors of William Henry Conrow, deceased, devisees of the real estate in question in this suit, so far as the same was claimed by the said Thornton Conrow in his lifetime, under and by virtue of the last will and testament of the said Thornton Conrow, deceased, and the other children, heirs-at-law, and devisees of said Thornton

Conrow, deceased, filed their joint and several answers to the plaintiffs' bill and *and* first and second amended and supplemental bills herein, to which answers the plaintiffs reply generally, and this cause is set for hearing as to the said defendants therein and is to be heard without further delay at the present sitting of this court, the said defendants, by S. Morris Waln, their attorney and counsel, and the said plaintiffs, by their counsel of record, agreeing that the same shall be heard and decided as provided for in the agreement between the defendants Benjamin Rich and the Wood Brothers and the plaintiffs entered of record heretofore in this cause.

S. MORRIS WALN,
Att'y and Counsel for the Above-Named Defendants.
JAMES H. FERGUSON,
Att'y and Counsel for the Plaintiffs.

The answers referred to in the foregoing order were filed on the 8th day of October, 1889, as appears by file-mark on said papers, and will be found copied in this record on page 554 and pages following.

849 And on another day, to wit, on the 27th day of September, 1889, the following order was made and entered of record, to wit:

Decree.

TAMLIN BRAXTON *et als.*
vs.
BENJAMIN RICH *et als.*
} In Equity.

This cause, having now been regularly set for hearing as to all the defendants therein, came on, this 27th day of September, 1889, for a final hearing and was argued by counsel, and the court, having maturely considered the case, is of opinion that the plaintiffs are entitled to the relief prayed for in their bill and first and second amended and supplemental bills.

It is therefore ordered, adjudged, and decreed by the court that the following-named deeds, to wit:

1st. A deed dated the 28th of September, 1870, made by James Woodzell, recorder of Webster county, in the State of West Virginia, of the first part, and Benjamin Rich and Thornton Conrow, of the second part, purporting to convey to the said parties of the second part a tract of land described therein as "one hundred thousand acres of land, described in the assessor's land book as lying and being on Gauley river and its tributaries, in the county of Webster."

2nd. A deed dated the 28th day of September, 1870, made by the said James Woodzell, recorder as aforesaid, of the first part, and Benjamin Rich, in part assignee of Albert Owens and G. P. Shreve, of the second part, purporting to convey to the said Benjamin Rich a tract of land described therein as "a tract of fifty-eight thousand five hundred acres (58,500) of land, described in the assessor's land book as lying on Elk and Gauley rivers, in the county of Webster."

3rd. A deed dated September 28th, 1870, made by James Wood-

zell, recorder as aforesaid, of the first part, and Benjamin Rich and Thornton Conrow, assignees of Albert Owen and G. P. Shreve,
850 of the second part, purporting to convey to the said parties of the second part a tract of land described therein as "a tract of land of twelve thousand five hundred acres (12,500) of land, in the county of Webster."

4th. A deed dated September 28th, 1870, made by the said James Woodzell, recorder as aforesaid, of the first part, and Benjamin Rich and Thornton Conrow, assignee of Albert Owens, of the second part, purporting to convey to the parties of the second part a tract of land described therein as "a tract of one hundred and five thousand (105,000) acres of land in the county of Webster."

5th. A deed dated October 3rd, 1872, made by the said James Woodzell, recorder as aforesaid, of the first part, and Benjamin Rich and Thornton Conrow, of the second part, purporting to convey to the said parties of the second part a tract of land described therein as "a tract of one hundred thousand (100,000) acres of land, described in the assessor's land book as lying and being on Gauley, Williams, Cherry, and Cranberry rivers, in the county of Webster."

6th. A deed dated October 30th, 1876, made by George W. Sawyers, clerk of the county court of Webster county, in the State of West Virginia, of the first part, and Benjamin Rich, Thornton Conrow, and Walter Wood, of the second part, purporting to convey to said parties of the second part a tract of land described therein as "a tract of land of 65,734 acres of land, situate in the said county, on Gauley and Williams rivers."

7th. A deed dated 3rd day of May, 1872, made by the said Benjamin Rich and wife and Thornton Conrow and wife, of the first part, and Ferdinand F. Sharp, of the second part, purporting to convey to the said party of the second part "the one undivided third part or moiety of all their interest, right, title, or claim of, in, and to the following three tracts of land in the county of Webster, State of West Virginia, to wit:

851 1st. The said tract of one hundred thousand acres surveyed for William McClary on the 23rd day of April, 1795, as stated in said deed.

2nd. The said tract of one hundred and five thousand acres surveyed for James Welch in the year 1795, as stated in said deed.

3rd. The said tract of twelve thousand five hundred acres surveyed for George Messingbird on the 10th day of May, 1795, as stated in said deed.

8th. A deed dated May 15th, 1872, made by the said Ferdinand F. Sharp and wife, of the first part, and Walter Wood, trustee, of the second part, purporting to convey to the said party of the second part "all the certain one-sixth undivided title or interest" of the party of the first part in and to the said three tracts of land which were conveyed to the said Ferdinand F. Sharp by the said Benjamin Rich and wife and Thornton Conrow and wife by their deed to him aforesaid.

9th. A deed dated the 1st day of March, 1879, made by the said Thornton Conrow, of the first part, and the said Walter Wood, of

the second part, purporting to convey to the said Walter Wood the one undivided sixth part of said tract of one hundred thousand acres of land conveyed as hereinbefore stated by the recorder of Webster county to the said Benjamin Rich and Thornton Conrow and which, as stated in the deed of March 1st, 1879, was surveyed for William McClary on the 23rd of April, 1795, and the same tract conveyed to the said Rich, Conrow, and Walter Wood by the clerk of the county court of Webster county by the deed dated October 30th, 1876, hereinbefore mentioned.

10th. A deed dated the 17th day of November, 1879, made by Joseph A. Thompson and James Woodzell, special commissioners, of the first part, and Walter Wood, trustee, of the second part, purporting to convey to the party of the second part the certain one-
sixth undivided title or interest to the lands mentioned and
852 conveyed by indenture of mortgage executed by the said
Ferdinand F. Sharp to the said Walter Wood, trustee as aforesaid, on the 15th day of May, 1872, and mentioned and described in said deed of November 17th, 1879, as follows: "The first of which contains one hundred thousand acres and is generally known as the McClary tract; the second of which contains one hundred and five thousand acres and is known as the Welch tract; the third and last contains twelve thousand five hundred acres and is known as the Messingbird tract."

11th. A deed dated the 13th day of December, 1875, made by Benjamin Rich and wife, of the first part, and Abram Waltman, of the second part, purporting to convey to the party of the second part an undivided one-eighth interest in the said tract of fifty-eight thousand five hundred acres conveyed to the said Benjamin Rich by the recorder of Webster county by the deed second (2nd) hereinbefore stated.

12th. A deed dated the thirtieth day of October, 1879, made by the said Benjamin Rich and wife, of the first part, and D. S. Robinson, cashier, of the second part, purporting to convey to the party of the second part the one undivided third part of the said tract of one hundred thousand acres of land surveyed for Col. William McClary on the 23rd day of April, 1795, as stated in said deed (copies of all of which said deeds are filed as exhibits with the bill of the plaintiffs herein), be, and each of them is, set aside as inoperative, fraudulent, null and void, and as clouds upon the plaintiffs' title to the *plaintiffs' title to the* land in question, so far as they and each of them overlap and include any of the lands of the said plaintiffs as laid down and shown upon the map filed with the papers of this cause, marked "Map of the lands in the suit of Caperton's Heirs *vs.* Rich and others, decree map," as follows: Beginning at the old
county line of Harrison county as laid down on said map at
853 the point designated by the red letter "L," and running
thence with the heavy red lines as laid down on said map by way of black letters "*a*, *b*, *c*, *d*, *e*, *f*, *g*, *h*, *i*" to red letter "K;" thence with said red line to its intersection with the heavy blue lines laid down on said map, which bounds the tract of 23,987 acres at

the letter "C," and with the said red line to the letter "M," and thence with said line back to red "L," the beginning.

And also by the red lines laid down on said map, beginning at the north fork of Cherry river at the point shown by the red letter "O," and running thence with the red line by the way of red letter "Y" and black letters "*r, s, t, u, v, w*," and back to "O," and also by the fine red line laid down on said map of lots numbers 8 and 10 of the series of lots marked from 1 to 10, inclusive, at and near the point shown by the letters "*f f*" and "B B."

And, it appearing to the court that there are certain reservations in the deed of John Williams to Allen T. Caperton for 77,104 acres, dated the 31st day of February, 1850, under which the plaintiffs in part claim, which reservations are designated on said map by the red figures 1 to 14, inclusive, and blue lines which surround the same, this decree is not to be construed as in any way affecting the said reservations or any of them.

And it is further considered by the court that the plaintiffs recover of the defendants their costs by them expended in the prosecution of this suit, including the costs of the last depositions taken herein.

And the court certifies that the matter in dispute in this cause, exclusive of costs, exceeds the sum and value of five thousand dollars; and thereupon, upon motion of the defendants Benjamin Rich, Walter Wood, Richard Wood, Edward R. Wood, and Ferdinand F. Sharp, an appeal is awarded and taken by them from this decree.

854 S. Morris Waln and Howard F. Conrow, administrators and trustees of the estate of Thornton Conrow, deceased, with the will annexed, and Alford T. Conrow and Anna Alida Levis, late Anna Alida Conrow, devisees of the land in question in this suit, as claimed by Thornton Conrow in his lifetime, and the other children and heirs-at-law of Thornton Conrow, deceased, — an appeal is awarded and taken by them from this decree.

But this appeal is not to be effectual until the defendants, or some person for them, give bond in the penalty of four thousand ($4,000) dollars, with good security, to be approved by the court or one of the judges thereof, with conditions as required by the statutes in such cases made and provided for the payment of costs, &c.

The map referred to in the above decree, marked "Map of the lands in the suit Caperton's Heirs *vs.* Rich and others, decree map," will be found copied at the end of this record, attached hereto.

And on another day, to wit, on the 4th day of November, 1889, the following "bond" was filed in the clerk's office of said court:

Know all men by these presents that we, Walter Wood, Richard Wood, and American Surety Co., surety, are held and firmly bound unto Tamlin Braxton and Mary E., his wife, late Mary E. Caperton; William A. Gordon and Harrietta C., his wife, late Harrietta C. Caperton; Malinda C. Patton, widow of James F. Patton, deceased, late Malinda C. Caperton; Robert Stiles, E. J. Caperton, Allen Caperton, and Ella Caperton in the full and just sum of four thou-

sand ($4,000.00) dollars, to be paid to the said Tamlin Braxton and Mary E., his wife, late Mary E. Caperton; William A. Gordon and Harrietta C., his wife, late Harrietta C. Caperton; Malinda
855 C. Patton, widow of James F. Patton, deceased, late Malinda C. Caperton; Robert Stiles, E. J. Caperton, Allen Caperton, and Ella Caperton, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of October, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a circuit court of the United States for the district of West Virginia, in a suit pending in said court between Tamlin Braxton and Mary E., his wife, late Mary E. Caperton; William A. Gordon and Harrietta C., his wife, late Harrietta C. Caperton; Malinda C. Patton, widow of James F. Patton, deceased, late Malinda C. Caperton; Robert Stiles, E. J. Caperton, Allen Caperton, and Ella Caperton, plaintiffs, and Benjamin Rich, Walter Wood, Richard Wood, Edward R. Wood, Ferdinand F. Sharp, S. Morris Waln, and others were defendants, a decree was rendered against the said Benjamin Rich, Walter Wood, Richard Wood, Edward R. Wood, Ferdinand F. Sharp, and S. Morris Waln, and the said Benjamin Rich, Walter Wood, Richard Wood, Edward R. Wood, Ferdinand F. Sharp, and S. Morris Waln having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Tamlin Braxton and Mary E., his wife, late Mary E. Caperton; William A. Gordon and Harrietta C., his wife, late Harrietta C. Caperton; Malinda C. Patton, widow of James F. Patton, deceased, late Malinda C. Caperton; Robert Stiles, E. J. Caperton, Allen Caperton, and Ella Caperton, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

856 Now, the condition of the above obligation is such that if the said Walter Wood, Richard Wood, and The American Surety Co. shall prosecute their appeal to effect and answer all costs if they fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) RICHARD WOOD. [SEAL.]
WALTER WOOD. [SEAL.]
AMERICAN SURETY COMPANY, [SEAL.]
By HENRY D. WELSH, *Vice-President.*
Attest: STEPHEN W. WHITE, [SEAL.]
Ass't Secretary.

[Seal of Amer. Surety Co.]

Sealed and delivered in the presence of—
GEORGE G. COOKMAN,
(As to Richard and Walter Wood.)

Approved by—
(S'g'd) J. J. JACKSON, *Dist. Judge.*

Nov. 4th, 1889.

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } ss:

Be it remembered that on this 28th day of October, A. D. 1889, before me, a notary public for the Commonwealth of Pennsylvania, residing in the city and county of Philadelphia, personally appeared Richard Wood and Walter Wood and acknowledged the foregoing indenture to be their act and deed and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] (Signed) GEORGE G. COOKMAN,
Notary Public, Philadelphia, Pa.

857 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true copy of so much of the record and proceedings as was required by the defendant- (the plaintiff- in the appeal) in the case of Tamlin Braxton and others *vs.* Benjamin Rich and others now on file and of record in my office.

Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Parkersburg, in said district of West Virginia, this 26th day of December, A. D. 1889.

L. B. DELLICKER,
Clerk Circuit Court United States, District of West Virginia.

(Here follow maps marked pp. 858 & 859.)

860 [Endorsed:] Sup. Court U. S. 1891, Octo. term. No. 669. Benjamin Rich *et al.*, app'l'ts, *vs.* Tamlin Braxton *et al.* (Maps.) Received with record and said to be part of record by counsel docketing cause. Filed as part of record Mar. 14, 1890.

861 In the Supreme Court of the United States.

BENJAMIN RICH and Others, Appellants,
vs.
TAMLIN BRAXTON and Others, Appellees.

There being, as alleged by the appellees, material defects and omissions in the transcript of the record filed in this court in this cause, it is therefore stipulated and agreed by the appellants and appellees, by their counsel and attorneys of record in the cause, as follows:

1. That the deed dated October 28, A. D. 1814, from William Cramond and wife to Thomas Astley, with the certificates of acknowledgement and recordation thereof, copies of which are contained in said transcript, are written on the back of the original deed from Robert Morris and wife to said William Cramond, bearing date the March 13th, A. D. 1797, a copy of which last-named deed is also contained in said transcript.

866 In the Circuit Court of the United States in and for the District of West Virginia, Sitting at Parkersburg, in said District.

TAMLIN BRAXTON *et al.*
vs.
BENJAMIN RICH *et al.* } In Equity.

To Alford Thornton Conrow and Anna Alida Levis (late Anna Alida Conrow), survivors of William Henry Conrow, deceased, who, together with the said William Henry, are the residuary devisees named in the will of Thornton Conrow, deceased, of the real estate in question in this suit claimed by the said Thornton Conrow in his lifetime, and Sarah Chew, Samuel Twomey, Alice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, heirs-at-law and devisees of Thornton Conrow, deceased; S. Morris Waln and Howard F. Conrow, administrators *de bonis non* and trustees with the will annexed of the estate of Thornton Conrow, deceased, and Benjamin Rich, Walter Wood, Richard Wood, and Edward R. Wood, defendants in the above-entitled suit, and to Caleb Boggess, the solicitor and counsel of the above-named defendants and each of them—

Notice is hereby given you and each of you that the plaintiffs in this cause desire the evidence to be adduced therein to be taken orally, and that in pursuance of rule 67 of the rules of practice of the courts of equity of the United States special examiners have been appointed by the above-named court to take, certify, and return said evidence; and E. B. Dyer, one of said special examiners, having, in pursuance of said rule, fixed ten days as a reasonable time for which notices of the times and places of the examination of the witnesses who are to be examined in this cause shall be given by the respective counsel or solicitors to the opposite counsel or solicitors or parties—

867 Notice is, therefore, further hereby given you and each of you that on the 21st day of November, 1888, between the hours of 8 o'clock a. m. and 10 o'clock p. m., at the law office of E. M. & J. Blanchard, in Bellefonte, Center county, State of Pennsylvania, the plaintiffs in the above-entitled cause will proceed to take the deposition of Albert Owen and others to be read as evidence in their behalf at the hearing of the above-entitled cause, now pending in the said circuit court of the United States in and for the district of West Virginia, at Parkersburg, wherein the said Tamlin Braxton and others are plaintiffs and the said Benjamin Rich and others are defendants, and that in case the said depositions are not completed on that day the taking thereof will be *completed* from day to day and from time to time (Sundays excepted) at the place and between the hours above stated until they are completed.

And that on the 24th day of November, 1888, between the hours last aforesaid, at the office of J. S. Clark, in the Bullitt building, in the city of Philadelphia and State of Pennsylvania, the said plain-

tiffs will proceed to take the deposition- of Henry Clay, Mrs. Feinour, James Gilliland, J. R. Sypher, Hon. William D. Kelley, S. Morris Waln, Howard F. Conrow, and others, to be read as evidence in their behalf at the hearing of the said cause now pending as aforesaid, and that if the said depositions are not completed on that day the taking thereof will be continued from day to day and from time to time (Sundays excepted) at the place and between the hours last aforesaid until they are completed.

And that on the 27th day of November, 1888, between the hours last aforesaid, at the residence of James Gilliland, near Linden, county of Montgomery, State of Maryland, the said plaintiffs will proceed to take the deposition of James Gilliland, to be read in their behalf at the hearing of the said cause now pending as aforesaid, and that if the said depositions are not completed on that day the taking thereof will be continued from day to day and from time to
868 time (Sundays excepted) at the place and between the hours last aforesaid until they are completed.

And that on the 22nd day of December, 1888, between the hours last aforesaid, at the office of the auditor of the State of West Virginia, in the city of Charleston, county of Kanawha and State of West Virginia, the said plaintiff- will proceed to take the deposition- of P. F. Duffy, W. A. Cracraft, W. H. Dyer, James H. Huling, W. T. Thompson, R. T. Herndon, Caleb Boggess, Wesley Mollohan, and others, to be read as evidence in their behalf on the hearing of the said cause now pending as aforesaid, and that if the said depositions are not completed on that day the taking thereof will be continued from day to day and from time to time (Sundays excepted) at the place and between the hours last aforesaid until they are completed.

And that on the 28th day of December, 1888, between the hours last aforesaid, at the office of G. M. Fleming, in the town of Buckhannon, in the State of West Virginia, the said plaintiffs will proceed to take the depositions of John B. Shreve, G. P. Shreve, John L. Smith, Mart. Shreve, and others, to be read as evidence in their behalf on the hearing of the said cause now pending as aforesaid, and that if the said depositions are not completed on that day the taking thereof will be continued from day to day and from time to time (Sundays excepted) at the place and between the hours last aforesaid until they are completed.

And that on the 8th day of January, 1889, between the hours last aforesaid, at the office of the auditor of public accounts, in the city of Richmond, State of Virginia, the said plaintiffs will proceed to take the depositions of Morton Marye, George V. Moncure, Joseph A. Wingfield, H. M. Allport, Robert Stiles, William G. Gaines, Weston Marye, William R. Gaines and others, to be read as evidence in their behalf on the hearing of the said cause now pending as aforesaid, and that if the said depositions are not completed on that day
869 the taking thereof will be continued from day to day and from time to time (Sundays excepted) at the place and between the hours last aforesaid until they are completed.

And that on the 4th day of December, 1888, between the hours last aforesaid, at the law office of C. P. Dorr, in the town of Addison,

county of Webster and State of West Virginia, the plaintiffs will proceed to take the depositions of Arthur Hamrick, Charles MacDodrill, George Dodrill, Andrew McElwain, James Woodzell, George M. Sawyers, Austin Rader, H. W. Rader, Ballard P. Conrad, Bernard Mollohan, C. W. Benedum, Brown M. Yeager, R. C. Clevenger, G. W. Wolverton, Mark Hammons, M. J. Stiltner, J. M. Stiltner, C. P. Dorr, Samuel Hinkle, Marshall Triplett, James S. Craig, Walter Hollister, Peter Hammons, Adonijah H. Coger, Daniel Hammons, Moses N. Barb, Peter B. Barb, Jesse Hammons, George M. McFarland, Christopher Baughmann, B. W. Byrne, James Mullins, B. C. Conrad, and others, to be read in evidence in their behalf on the hearing of said cause now pending as aforesaid, and that if the said depositions are not completed on that day the taking thereof will be continued from day to day and from time to time (Sundays excepted) at the place and between the hours last aforesaid until they are completed.

Dated this 20th day of October, 1888.

JAMES H. FERGUSON,
Counsel and Solicitor for the Plaintiffs.

EASTERN DISTRICT OF PENNSYLVANIA, } ss:
City of Philadelphia, }

I, George W. Painter, do hereby certify that I served the within notice to take depositions on the defendants S. Morris Waln and Howard F. Conrow, the administrators *de bonis non* and trustees, with the will annexed, of the estate of Thornton Conrow, deceased, named in said notice, by delivering to each of them a true copy
870 and explaining the contents thereof in the State, city, and district aforesaid—that is to say, to the said Conrow on the 6th day of November, 1888, and to the said Waln on the 7th day of November, 1888, and that on the 6th day of November, 1888, I served the said notice as to the defendant Sarah Chew, Samuel Twomey, Alice Roach, Thornton Conrow Lippincott, Thornton Conrow Hancock, Lydia L. Green, and Darling Conrow Lippincott, named in said notice, by delivering a true copy and explaining the contents thereof for each of them to the said Howard F. Conrow; and I further certify that I served the said notice on the defendants Alford Thornton Conrow, named in said notice, by delivering to him a true copy and explaining the contents thereof on the 6th day of November, 1888, in the State, city, and district aforesaid, and that I served the said notice on the defendant Anna Alida Levis, named therein, on the 6th day of November, 1888, in the State, city, and district aforesaid by delivering a true copy thereof to Alford Thornton Conrow, a person of suitable age and discretion and an adult member of her family, at her usual place of residence, and explaining to him the purport thereof.

Dated this 7th day of November, 1888.

GEO. W. PAINTER.

STATE OF PENNSYLVANIA, *City of Philadelphia,* } *To wit:*

This day personally appeared before me, a notary public in and for the said State and city, George W. Painter, whose name is signed to the foregoing return of service, who, after being by me first duly sworn, deposes and says that the said return is in all things correct and true.

GEO. W. PAINTER.

Sworn to and subscribed before me this 7th day of November, 1888.

JOSEPH S. CLARK,
Notary Public.

871 EASTERN DISTRICT OF PENNSYLVANIA, *City of Philadelphia,* } *ss:*

I, George W. Painter, do hereby certify that I served the within notice to take depositions on the defendant Anna Alida Levis, named in said notice, by delivering to her on the 14th day of November, in the State, city, and district aforesaid, a true copy, and explaining the contents thereof.

Dated this 14th day of November, A. D. 1888.

GEO. W. PAINTER.

STATE OF PENNSYLVANIA, *City of Philadelphia,* } *ss:*

This day personally appeared before me, the undersigned, a notary public in and for the said State and city, George W. Painter, whose name is signed to the foregoing return of service, who, after being by me first duly sworn, deposes and says that the said return is in all things correct and true.

GEO. W. PAINTER.

Sworn and subscribed to before me this 14th day of November, 1888.

[SEAL.] JOSEPH S. CLARK,
Notary Public.

UNITED STATES OF AMERICA, *District of West Va., Kanawha County,* } *To wit:*

Clarence Moore, being duly sworn, says that he served the within notice on Caleb Boggess, the attorney of the defendants named in the said notice, by delivering to him a true copy thereof in the town of Clarksburg, county of Harrison, his place of residence, in the district aforesaid, and State of West Virginia, on the 10th day of November, 1888.

CLARENCE MOORE.

Taken, sworn to, and subscribed before me, the undersigned, clerk of the district court of the United States in and for the State and

district aforesaid, said court having circuit-court powers, this 14th day of November, 1888.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

UNITED STATES OF AMERICA, }
State of Pennsylvania, County of Centre, } *ss* :

Be it remembered that I, E. M. Blanchard, a special examiner, duly appointed by the circuit court of the United States in and for the district of West Virginia, on this 21st day of November, 1888, between the hours of 8 o'clock a. m. and 10 o'clock p. m., at my office, in Bellefonte, Centre county, Pennsylvania, in pursuance of the notices hereto annexed, did call and cause to come before me
872 personally the following-named witnesses, to wit, Albert Owen, to testify and th- truth to say on the part and behalf of the plaintiffs in a certain suit and matter of controversy in equity now depending and undetermined in said circuit court of the United States within and for the district aforesaid, wherein Tamlin Braxton and others are plaintiffs and Benjamin Rich and others are defendants; and the said witnesses and each of them being first carefully examined, cautioned, and sworn by me to testify the whole truth in the suit and matter of controversy aforesaid, I did thereupon carefully examine the said witnesses and each of them, and they and each of them did depose, testify, and say in answer to questions propounded to them and each of them as is stated below:

Present: For plaintiffs, E. L. Buttrick, Esq.; for defendants, S. Morris Waln, Esq., appears for S. Morris Waln and Howard F. Conrow, adm'r *d. b. n. c. t. f.* of Thornton Conrow, dec'd, and John F. Keator, Esq., appears for Walter Wood, Richard Wood, and Edward R. Wood.

ALBERT OWEN, a witness above named, after being cautioned and sworn as aforesaid, deposes and says:

Question by E. L. BUTTRICK, Esq., attorney for plaintiffs:

State your name, age, residence, and occupation.

Answer. My name is Albert Owen; I live in Bellefonte, Pennsylvania; I am 64 years of age; I am looking after various parcels of real estate owned by me, and I sometimes buy and sell real estate on commision.

(Attorneys for defendants above named object to the taking of these depositions for the following reasons:

1st. Because they have been taken before.

2nd. Because the time has expired within which the proof was to be taken by order of court and no order for retaking or extension of time has been granted by the court.

873 3rd. Because the matter is irrelevant and immaterial.)

Question (by E. L. BUTTRICK, Esq.). Do you know Benjamin Rich, and did you know Thornton Conrow in his lifetime?

Answer. I know Benjamin Rich very well. I knew of Thornton Conrow; met him once and had a very brief conversation.

Question. Did you know Jno. B. Shrieve, of Upshur county, W. Va., and do you know Granville P. Shrieve, his son?

Answer. I made the acquaintance of Jno. B. Shrieve and Granville P. Shrieve about May 1st, 1869. I had frequent interviews with them during the next three or four years.

Question. State whether you attended the sale of lands in Webster county, West Va., on the 24th day of Sept., 1869.

(Mr. Waln objects to the question because it is indefinite, and it does not appear from the question that the lands mentioned in the question were the same lands which are the subject-matter of this controversy.)

Answer. I did attend the public sale of lands at the time and place mentioned.

Question by same. If you know anything in regard to the entry on the land books of Webster Co., West Va., for taxation of the lands sold on the occasion when you were present, please state all you know in relation to the matter, either from your own knowledge or by conversations with Benjamin Rich or any of the other defendants or by conversations with Jno. B. Shrieve or Granville P. Shrieve.

(Mr. Waln objects to the question because—

1st. The land books of Webster Co., West Va., are not here produced, and I object to any questions in regard to the contents of those books in their absence. I also object to the question because it involves several answers and is not single and distinct.

Mr. Keator also objects on the above grounds, and that no
874 conversations with other parties except defendants is competent evidence.)

Answer. In 1869 the public land sales of West Va. attracted considerable attention in this part of the State of Penna. and elsewhere. I was induced about the 1st of May, 1869, to see what prospective objects in the way of public lands existed there. I was advised to call on Jno. B. Shrieve, as an old experienced surveyor and as having very extensive knowledge of the lands of West Va. I went to his residence, in Upshur Co., early in May, 1869, to see what information I could get. He showed me a large folio of plots.

(Mr. Waln objects to any testimony in relation to plots contained in the folio referred to unless said folio is produced.)

These plots purported to be the work of Edward Jackson, formerly surveyor of lands for the State of Va., and his assistants or deputies. Mr. Shreeve further assured me that he had been a life-long surveyor, had been shown lines and corners by Jackson and others, and that he probably knew more about the lands of West Va. than any man living. He also introduced me to D. D. F. Farnsworth, then speaker of the senate of the newly organized State of West Virginia and at or about that time *ex officio* governor of the State of West Va. He

also placed in my hands a letter from D. D. F. Farnsworth referring to the coming lands sales of West Va. which were that year to be sold for delinquent taxes. This letter I will here produce and make part of my testimony. (A copy of which, made by me, is hereto attached and marked Exhibit A, E. M. Blanchard, examiner.) I received this letter from the hand of Jno. B. Shrieve, and subsequently I called on Farnsworth to inquire into the genuineness of the letter. The Senator acknowledged its validity and gave me a copy of the Code of West Va. in support of what he had written. With these surroundings, I made an arrangement with Jno. B. Shreeve that he should give me access to his plots before named, and that I would attend the sale. He was to advise me in the
875 selection of lands to be purchased or bid upon. He was also to survey and identify any lands purchased by me, and for his services he was to receive the sum of $2,000 for any one hundred thousand acres purchased by me and surveyed and identified by him. I mean purchased by me at the tax sale. I then came home and stated the situation to some of my friends and acquaintances. I here produce the agreement made between John B. Shreeve and myself, dated the 1st of May, 1869. (A copy of this agreement is made by me and hereto annexed, marked Exhibit "B," E. M. Blanchard, examiner.)

I then made an effort to raise funds to attend the prospective sale of lands for delinquent taxes. The time of sale was not then fixed by the authorities of Webster Co., West Va. Among other persons, I was introduced to Benjamin Rich, who was then an entire stranger to me. Mr. Rich and two or three of his friends agreed to furnish me with a thousand dollars and to take a corresponding interest in such lands as I should purchase. He, or any of them, was to have the right to be present at the sale, but I was to do the bidding in my own name, and he or they could be present to show that the transaction was fair upon my part. Immediately prior to the time fixed for the sale, viz., 24th of Sept., 1869, I called on Mr. Rich and the other gentlemen for the funds promised and to know who of them would go with me. They all declined going to the sale except Mr. Rich. He said if he could raise some money and shape his domestic affairs he would go down with me. He did go, and attended the sale with me. We arrived at Webster one or two days prior to the sale. I was present during the entire outcry, and bidding, and sale of the lands. There were many persons present. It was as the law required—during the session of the court. Besides ordinary citizens and strangers, there were lawyers from other counties, real-estate speculators from other parts of the State and from other places. Mr. Rich and several gentlemen from Centre county and the interior of Pennsylvania were present. Jno. B.
876 Shreve and Granville P. Shrieve were present. The sale was somewhat animated. Two or three controversies arose among the lawyers and some of the bidders; some harsh words took place between two West Va. lawyers. I bid at random on many tracts, and, according to my recollection, I bid in nearly a half million acres. This is a copy of the lands purchased at that sale by me

(Copy of list made by E. M. Blanchard, N. P., shown witness and marked Exhibit "C."

(Mr. Keator objects to the paper purporting to be a copy of a memorandum of real estate within the county of Webster sold the 24th of Sept., 1869, for the non-payment of taxes thereon for the years 1865, 1866, 1867, and 1868.)

Question by Mr. KEATOR. It is some time since I have seen the original of this. I have not reviewed the original list since my deposition was taken in this same case by Judge Ferguson, some four years and a half ago. The original list was presented to the commissioner and copied. The commissioner was Mr. E. M. Blanchard, and this seems to be the commissioner's copy made at that time.

Question. I notice a number of erasures and interlineations made here. I suppose you would be unable to say positively that these changes had not been made since the time of taking the depositions, 4½ years ago, and therefore this might not be an exact and true copy?

Answer. The apparent interlineation on the first line of the list, to wit, Bryant, Allen C., and Moffit, F. H., is in the original. There are and was at the time—I submitted the paper at the former examination—erasures in the columns denoting the amounts of money paid as taxes. Whether the erasures in this paper and the original paper submitted by me are incidental I am unable to say. It is quite probable they correspond.

Question. You are not positive that that is an exact copy?

Answer. No; I could not be positive that this is an exact
877 copy without a close comparison.

(Mr. Keator objects to the paper because it is not an original paper.)

Question by complainants' counsel. State whether the list that is submitted here without the erasures is a correct list of the land you purchased or how otherwise.

Answer. I can't say that it is. The original was correct. This copy appears to be. Printed blanks were prepared by the sheriff for each tract sold and was held by the purchaser as his certificate of purchase and a receipt for the money paid. I, before leaving the sale, asked the sheriff's clerk to make me out a complete list of my purchases all on one sheet, leaving the individual certificates to be prepared at the convenience of the sheriff.

Question. State what agreement, if any, you had with Mr. Rich with regard to the purchase of the lands at the land sale mentioned and whether the sale was in writing or oral; and, if in writing, will you please present it; if verbal, state what it was.

Answer. I had a written agreement with Benjamin Rich and three of his neighbors—a Mr. Alexander, Thomas Geary, and Dr. Blair—by which they were to furnish me one thousand dollars to attend these sales and they receive an interest in the lands. This agreement was in writing, signed by all of us, but I do not find it among my papers and am unable to say what has become of it. The three friends of

Rich seemed to become doubtful of the project and declined to proceed unless I would give them further stipulations, which I declined to do, finding one of their number to be a trickster. Mr. Rich was the only one of the four who carried out his part of the contract. Mr. Rich furnished more money than his representative share in the contract and went and attended the sale. He furnished probably three or four hundred dollars. I had negotiated some other small sums of money from other parties on verbal understandings of a similar character.

878 Question. State what portion of the lands purchased Rich was to receive.

Answer. On the failure of the other parties there was a tacit agreement between Rich and myself that he should receive a handsome interest with me, but that interest was not definitely fixed, but after the sale he was to have the right to withdraw, and I agreed to refund his money if he was dissatisfied with the situation after the sale was over. I reserved the right to do all the bidding in my own name. During the progress of the sale Rich came to me and said he wanted to buy in something and carry it home in his own name. The interest which Rich subsequently received was settled between him and me, and on our return from West Va. I brought up the question and offered to pay him back his money and expenses if he preferred it, and he elected to retain an interest in the lands. Some time during the following year Benj. Rich and Jno. B. Shreeve came to my house for settlement. We looked over the list of purchasers. I turned over some of the certificates of purchase for the benefit of Mr. Rich and assigned the same to him.

Question. State whether Mr. Rich, at the time these lands were purchased at said tax sale, *he* was cognizant of the contract between you and Jno. B. Shreeve, marked in your deposition as Exhibit "B."

(Mr. Waln objects to the form of the question.)

Answer. I am unable to say whether I ever showed Mr. Rich the contract or not. In all probability I stated that I had an arrangement with the old land surveyor, Jno. B. Shreeve, to work for my interest, and in all probability I stated to Rich and others the advantages which Shreeve seem- to have. It is also due to Mr. Rich to state that while I was making the negotiation with him and his friends he was engrossed in business, flying about, and said that whatever the others arranged he would go in with. I probably did state to Mr. Rich and all others with whom I had dealings of a similar character that I had a written contract with Jno. B. Shreeve.

879 Question. What are the probabilities of Mr. Rich knowing of the existence and contents of your contract with Mr. Shreeves, and have you any doubt that he knew what the contents of that contract were in detail before the purchase of these lands at the sale aforesaid?

(Mr. Waln objects because the question has already been twice answered and the plaintiff is endeavoring to cross-examine his own witness.

2nd. Because the witness has stated in his testimony that he has no knowledge that Rich ever saw or knew of this contract, but that he probably stated to Mr. Rich and all others that he had some arrangement with Mr. Shreeve.

3rd. The question asked the witness the probabilities of Rich's knowledge, and probabilities are not competent evidence.)

Answer. As I have stated, he probably knew that a written understanding existed between me and Shreeves, but to say that he knew the full contents of that contract would be unjustifiable on my part. If I were to say that he probably understood I could not give my reason for the probability, and if I were to say that he had not seen it or been made fully acquainted with it I would also be unable to give a reason for such a statement, nineteen years having elapsed since the transaction.

Question. State if he had any means of acquiring a knowledge of the contents of this contract except from you.

(Mr. Keator objects to the question on the ground that it would be impossible for him to answer.)

Answer. No; he would not. I carried my papers closely in my own possession and no man had access to them.

Question. State whether Jno. B. Shreeve carried out the contract marked Exhibit "B," or how otherwise.

Answer. The contract was carried out by Shreeve in part, but not with fidelity and not really in good faith. I made the best
880 of the situation I could and had a bitter controversy with him two years afterwards at Webster court-house.

Question. State how that controversy arose.

(Mr. Keator objects unless the controversy was in relation to land in litigation herein.)

Answer. That controversy was not about the (land) here in litigation, but it arose from the general treatment I received from Shreeve, and particularly in reference to the Joseph Patterson tract of land. Shreeves seemed to be dealing with other parties, negligent of my interests, and failed to furnish plots of several of the tracts of land which I had purchased. I was forced to go to Randolph county and take a copy of the plot of the regular survey of the Joseph Patterson tract and took it to Webster with a view of getting my deed from the recorder, and with the assistance of the county surveyor, Mr. Mollohan, Shreeve, seeing himself beaten in his efforts to compass my interests, threatened me with an injunction, and I believe did have a writ in the hands of the sheriff. Hearing of this, I went to the sheriff and Shreeve and said to them, Now, I know what you are doing. Withdraw your proceedings or I will have you arrested on the spot. I had a deputy U. S. marshal at my elbow. There was no writ served. I took my own course and got my deed for the Patterson tract, and Shreeve never seemed to forgive what he

called the insult. He complained of my treatment and I complained of his.

Question. Upon what ground did you propose to arrest him?

Answer. On the ground that he was attempting to forestall my legitimate business and render me subject to his control by intimidation and false arrest. There was no just ground for either threatened proceedings, but I knew I could bluff as well as he could.

Question. Why did he seek to arrest you, and how could he render you subject to his control? Please state what you mean by that.

881 Answer. My agreement with Shreeve, as here exhibited, explains itself. He had agreed to work for me in preference to all others. He was not furnishing me with plots and surveys to enable me to procure my deeds. No just explanation was given for his delinquency. I had thrown myself upon my own resources and taken proper steps to obtain the deeds of the lands I had purchased. Seeing that I was acting independent and that he was likely to forfeit the fees he was entitled to under the contract, he became embittered and started some proceeding to forestall my efforts, and I retaliated in the threatening manner I have here represented.

Question. Please state upon what grounds you proposed to arrest Jno. B. Shreeves at the time you mentioned and state, as nearly as you can, what you said to him by which he was induced to forego the service of the injunction.

(Objected to by Mr. Waln that the question is not pertinent to the issue in this cause.)

The taking of these depositions was continued until 9½ o'clock a. m., Nov. 22nd, 1888.

NOV. 22ND, 1888.

Resumed.

ALBERT OWEN on the stand.

E. L. Buttrick, Esq., att'y for complainants, and S. Morris Waln, Esq., att'y for defendants, present; also Jno. F. Keator, Esq.

Answer. I was there, away from home, on expense, on a legitimate business, pursued in a legitimate way, to wit, acquiring title to the lands I had purchased. Mr. Shreeve having neglected my business, I employed an attorney—Mr. Totten, of Buckhannon, West Va.—and the county surveyor of Webster county, Mr. Mullahon, to assist me in my work. Shreeve became aggravated at me, as he saw that he was forfeiting his rights under the written contract between us, which I have offered here in evidence. I did not see his complaint against me, nor cared to see it. On being informed that he was entering proceedings to forestall

882 my efforts, I knew it was a species of blackmail, and I then went to him and to the sheriff, who were both at the courthouse, and told them that if any proceedings were entered against me I would arrest Shreeve and he must take the consequences.

This statement on my part was partly in earnest, but I knew that a bluffer was better for him than a lawsuit. I knew that both he and the sheriff would see — was unjustifiable, and that they were too much of cowards to proceed with it. The matters in controversy between me and Shreeve at this time have no reference to the McClary tracts or the lands here in litigation.

(Mr. Waln objects to the whole of the answer of the witness, as the answer shows it has no reference to the lands involved in this litigation.)

Question. Did you personally, or Mr. Rich, to your knowledge or in your presence, consult any attorney, either before or at the time of the sale, in regard to the title which might be acquired by purchase of the tracts advertised for sale and sold on the 24th day of Sept., 1869, at which sale the purchases of yourself and Mr. Rich were made?

(Mr. Keator objects to the question.)

Answer. I did not consult any attorney. Mr. Rich did not, to my knowledge. There was no resident attorney in the county. All of the attorneys who met at the court-house were strangers to us.

Question. State whether Judge Homer A. Holt told you or stated in your presence anything about the title to be acquired at the sale of the lands about to be made for taxes; and, if so, state what he said.

(Mr. Waln objects to the question.)

Answer. He certainly did not. At the time of the sale we had no such acquaintance.

(Mr. Waln desires the master to note the fact that the witness was handed his testimony taken in this suit before E. M. Blanchard, special examiner, on the 20th day of May, 1884, by Mr. Buttrick, and his attention called to question seven and answer seven thereto.

883 Mr. Waln objects to counsel handing the testimony to the witness.)

On more careful reflection I am prepared to say that my conversation with Judge Holt occurred months after the sale, and I think one or two years. I attended court afterwards and got very well acquainted with Judge Holt. He did make some general remarks about the titles to be acquired under these tax sales, but these remarks referred in a general way to West Virginia titles, and I did ask him particularly about a tract of 8,000 acres purchased by me and sold in the name of James Camp's heirs. I asked him if he could get me up a brief of title. He said he thought he could. This conversation occurred certainly one year after the sale.

Question. State whether you had any conversation with Judge Holt prior to the sale with regard to the titles which could be acquired at the sale by purchase.

(Objected to by Mr. Keator as not referring in manner to the land in dispute in this suit.)

Answer. I have no recollection of such a conversation with Judge Holt prior to the sale. My strongest impressions are that (I) avoided all such conversations with all persons who were strangers.

Question. Did either Jno. B. Shreeve or G. P. Shreeve say anything to you about an arrangement between himself, Mr. Brockerhoff, Huling, and others, of Pennsylvania; a man by the name of Cherry, of Baltimore; Daniel Welch, of Washington, and others in regard to these lands and the sale thereof or of any of them; and, if so, what did they or either of them say?

(Mr. Waln objects to the question because it is a matter irrelevant to this issue between parties in no way connected with this litigation and utterly immaterial to this case.)

Answer. In my several conversations with Jno. B. Shreve he informed me that he was making surveys and rendering service to a syndicate of Pennsylvania from Bellefonte, Lock Haven, and
884 elsewhere, and among them he named prominently James Gilliland, Mr. Huling, Mr. Brockerhoff, Mr. Love, and others, all of whom were strangers to me, but they were represented to be twelve in number. Mr. Gilliland was named as the leader of that association, which I have called a syndicate. I saw Gilliland, young Huling, and McClenahan at the sale. McClenahan seemed to represent Dan'l Welch's interest. I did not make the acquaintance of any of them except McClenahan. Shreeve complained that old Gilliland was going back on him and would not furnish the funds which had been promised for his services. This had been repeated to me two or three (times) prior to the sale in my interviews with Shreeve. Granville P. Shreeve did not take any active part in the business affairs and arrangement of his father, but was merely in attendance, and I think never had any definite conversations with me pertinent to this case.

(Mr. Waln objects to the entire answer.)

Question. State whether you saw the advertisement of the list of lands to be sold for taxes posted up or in the hands of the sheriff or elsewhere.

Answer. I did see a long list of lands so advertised and posted on the front door of the court-house at Webster. I also saw another list in what I think was large folio form in the recorder's office at Webster. At the sale the sheriff held a list in his hands.

Question. Did you see anything written in pencil on the list of sales opposite any one or more of the tracts therein named; and, if so, what?

(Objected to by Mr. Keator, as the record is the bestevidence.)

On the day prior to the sale I was in the recorder's office and looked over the list of lands so advertised. I saw opposite to the

names of some tracts the word "redeemed." I think in some instances would be written "tax is paid."

885 (Mr. Waln objects to the previous answer and all other questions and answers of a like character which do not refer to the McClary tract, the Welch tract, the Banks tract, the Bridges tract, and the Messingbird tract, the five tracts of land involved in this lawsuit.)

Question. Were not the words "redeemed" or "taxes paid," one or the other, written opposite the Wm. McClary tract of one hundred thousand acres?

(Objected to by Mr. Waln.)

Answer. I cannot say that it was.

Question. Was not the McClary tract of one hundred thousand acres one of the tracts which Judge Holt told you the title would be bad or doubtful?

(Mr. Waln objects to the question.)

Answer. I do not think it is. As I stated before, I had no such advice from Judge Holt or anybody else prior to the sale.

Question. Do you remember anything of a Henry Banks survey of 58,500 acres being sold at that sale?

Answer. The name is familiar, and it appears to me it was on my list of purchases.

Question. Do you remember whether or not you bid in the Wm. McClary tract of 100,000 acres? And, if you did, state why the purchase price was erased from the list, a copy of which is filed with this your deposition, marked Exhibit "C," and state why the residue of the erasures on said list were made.

(Mr. Waln objects to the question because—

1st. It has not been proved that there were on the original list, of which this purports to be a copy, any erasures.

2nd. Because it has not been proved that any erasures on the original list existed or were made by the witness.

3rd. Because the original list is still in existence and the

886 best evidence.

4th. Because the question assumes that the purchase price was erased on said list as to the McClary tract, which is not a fact.)

Answer. My recollection is not entirely clear in reference to the purchase. Rich may have made the bid or I may have made it, with a specific understanding with him; and, in reference to the erasure and other erasures, that list was prepared in the evening after the sale by a Mr. Arnold, of Beverly, who was acting as a temporary clerk for the sheriff, and that list was prepared at my instance to enable me to leave for home the next morning. It was an extra work on the part of the clerk, for which I paid him, Mr. Arnold. The regular method of the sheriff was to give separate certificates for each tract sold, and the sheriff and his deputy was — surrounded with clamorous voices that I could not get the separate certificates

in time to leave the next morning. It was made semi-official by the signature of the sheriff. I was informed by the sheriff that time would be given me to pay in the money and lift my certificates. I paid the amount receipted on the list as purchase-money for the lands bought, and I subsequently returned to Webster and paid other monies to the sheriff and lifted individual certificates. I remember the sheriff said he had until the 1st of January following to make his return, and there was no objection to the delay; other parties had the same privilege. As for the erasures on my list (I am speaking of the list handed in here yesterday) they were made, probably, by myself for my own individual benefit in keeping track of moneys paid out or of lists that I wished to obtain deeds of or of tracts that I wished to obtain deeds of in preference to other tracts; something of that kind would seem to have been in my mind at the time.

Question. You stated that the sale of the land you attended at Webster court-house was somewhat animated. Please state what you mean by that expression.

887 Answer. The sheriff announced the opening of the sale and, I believe, sold one or two tracts. He then handed the list to his deputy, saying that he had some business in court to attend to, and that his deputy would conduct the sale. His deputy went inside the door, sat down at the end of the table, close to the door, and commenced announcing the list. Several lawyers, real-estate agents, and others surrounded the deputy, and the sale did not seem to be conducted in an open, fair way to all bidders. Several murmurs were heard by me protesting against it. One gentleman, who I think was represented to be a lawyer at the time, said if that was going to be the way he would blow up the whole concern. Another lawyer from Nicholas county retorted with some offensive language and met with a rejoinder of a similar character. The sheriff came and directed the deputy to go outside and conduct the sale in an open, proper way. The deputy did as ordered by the sheriff and the complaints ceased.

Question. Do you still own the lands purchased by you or any of them; and, if not, to whom have you sold and conveyed them?

Answer. I have either abandoned or sold nearly all of the lands purchased by me. I still hold deeds of several tracts purchased by me. I turned over several large tracts to Benjamin Rich, in settlement with him. I think this was done by assigning to Rich the sheriff's certificates of sale to me and ordering the deeds to be executed to Rich instead of me. I think in our settlement either one or both of the Shreves were to have some interest with Rich, and I was to be relieved of a corresponding obligation to Shreve under our contract marked Exhibit "B." This transfer was a full settlement between Rich and me and the interest of Shreve with Rich was a matter between themselves.

Question. In the settlement between you and Rich, did Rich agree to pay to Shreve the amount which you in your agreement agreed to pay Shreve for the lands which you transferred to Rich?

888 Answer. It was well understood that I was to be relieved from that obligation. Both Shreve and Rich understood this.

(Mr. Keator objects to this on the ground that the transaction occurred long subsequent to the time when the conspiracy is alleged to have occurred in the bill of the plaintiffs.)

Question. You state in your deposition that you were present at a settlement between Shreve and Rich in regard to these lands. State if you know the terms of that settlement, and whether it was based as to the amount to be paid upon the terms expressed in the contract between you and Shreve, or how otherwise.

(Mr. Waln objects because it does not appear that Rich had anything to do with the title to these lands until after the title had been acquired by Mr. Owens, the witness, from whom Mr. Rich purchased.)

Answer. I think there is a misapprehension about my statement. I mean to say that Jno. B. Shreve and Benjamin Rich were together at my house in Pennsylvania when I settled with Rich and turned over a portion of the lands purchased to Rich in final settlement. I never was present at any settlement or arrangement between Shreeve and Rich at any time or any place.

Question. State whether you or Mr. Rich, to your knowledge, at any time prior to the sale, consulted with any attorney or sought to acquire any information in regard to the title which you would acquire by virtue of purchases at those tax sales, other than the information contained in the letter of D. D. T. Farnsworth, marked Exhibit "A," and the information which you acquired from Jno. B. Shreve; and, if so, what attorney or attorneys did you consult and from what source did you seek to acquire such additional information.

(Mr. Waln objects, 1st, because a dozen questions are involved in one; 2nd, because a greater part of the question has been answered at least four or five times by the witness; 3rd, because a great part of the question calls for hearsay and inadmissible testimony.)

889 Answer. I have already said that I did not consult any lawyer; that Mr. Rich did not so far as I know, and that Mr. Farnsworth named placed in my hands the code of West Va., and that I read from the code several sections referring to the sale for delinquent taxes under the new organic law of West Va. I have also stated that I bid at random in most of the purchases made, for at the time of the sale it was plainly evident to my mind that the lawyers in attendance would be as unreliable as any parties to be consulted. They all seemed to be on a keen scent of speculation, and I relied solely on my own judgment and resources.

The plaintiff rests.

Cross-examination.

By Mr. KEATOR:

Question. At whose instance did Mr. Rich go to West Va. in 1869?

Question. I want to know whether the single certificates issued to you by the sheriff at the time you purchased these lands were issued to you individually and whether these lands were not bid individually to you at that sale.

(Objected to by Mr. Buttrick because it is impeaching the record.)

Answer. My first impressions would be that I had made the purchase and then had authorized an entry, as the record shows, or had assigned the sheriff's certificates to Benjamin Rich or an interest therein. It is not clear to my mind how we made this arrangement as shown by the record, but it was evidently authorized by me at some time. As to the James Welch tract, my recollection and the record agree that it was purchased by me and subsequently assigned to Rich. As to the Messingbird, my recollection would be the same.

Question. Have you the original certificates issued by the sheriff to you for these four tracts at the time you purchased them?

Answer. I have not.

Question. Do you know who has them?

893 Answer. They were assigned and turned over into the hands of Benjamin Rich, for they would be a necessity in the hands of the recorder before the deeds could be executed.

Question. When did you first go to West Va. in regard to these lands?

Answer. About the 1st of May, 1869; probably the 30th of April. I had never been in West Va. previous to that. I was simply out on a prospecting tour. I had been twice in old Va. and in eastern Tennessee, and on my return I met a gentleman in Washington city, — wh- I suggested West Va. as a good place for investments. This was a time when the Southern country was being canvassed by prospectors, and I caught the land fever. My attention had also been called to West Va. prospects by persons here in Centre county who had either been in or invested in West Va. I went there to purchase lands, nothing else.

Question. Did you learn when you got there that these lands were to be sold for taxes?

Answer. I was told that the constituted authorities had ordered the sales to be made in the following autumn, and that the date of the sale in Webster had not been fixed.

Question. State what you did preparing yourself to become a purchaser at these sales.

Answer. I have already said that I entered into this agreement with Shreeve, acquired further information from Farnsdworth, and came home to negotiate some money to carry out the project.

Question. Did Jno. B. Shreeve hold any public office in West Va.?

Answer. No; he did not.

Question. When these lands were sold at public sale the State did not undertake to locate them for you, did it?

Answer. No; I think not. They had to be located by the county

surveyors in the respective counties at the expense of the purchaser.

894 Question. When you entered into this agreement with Shreeve did you know that it was the business of the county surveyor to locate and survey tracts of land purchased at tax sales at the expense of the purchaser?

Answer. I was ignorant of all those facts. I did not know they had county surveyors.

Question. This agreement, Exhibit "B," recites "that the said Jno. B. Shreeve agrees to survey, plot, point out, and identify to the said Albert Owen or others under him the lands" which you might purchase at the tax sale, for which you agreed to pay him two cents per acre. Did you not employ Mr. Shreeve to make these surveys because you thought that you had the right to select and pay your own surveyor and because Mr. Shreeve had been especially recommended to you by high authority as a competent person?

(Objected to by Mr. Buttrick.)

Answer. I employed Jno. B. Shreve because he was a man of experience and reputed to be better acquainted with the lands in that section of the State than any man living and because he showed me the plots of the original surveys of Edward Jackson and his deputies and because he was recommended by Farnsworth as before stated. I employed (him) to identify, point out, and survey these lands.

Question. Did you have any other contract with Shreeve, either verbal or in writing, except Exhibit "B"?

Answer. I had no other contract, except that we agreed I should return to West Va. some future day and go to Webster and accompany him on any surveys at my own pleasure.

(Exhibit "A" shown witness.)

Question. That letter is without date. Can you tell us when that Farnsworth letter first came into your hands and where it has been ever since that time?

Answer. It came into my hands on or about the 1st of May, 1869, and it has been in my possession ever since.

895 Question. Was it not chiefly in consequence of that letter of Mr. Farnsworth, who was then speaker of the senate and *ex officio* governor of West Va., in which he recommended Mr. Shreeve as a competent person and a person who knew more about the lands in that county than any man then living, that you employed Mr. Shreeve and made that agreement with him?

Answer. That would be saying too much. The position was materially strengthened by the Farnsworth letter, but I think I would have made negotiations with Shreeve if I had not seen the letter.

Question. On the 24th of September, 1869, you attended the sale. Did you inquire previous to this time whether all the requirements of the law had been complied with—whether the lands were duly advertised, &c.?

Answer. I took it for granted everything was straight and made no further inquiries.

Question. You say you bid at random?

Answer. Yes.

Question. And these lands were struck off to you as the highest bidder?

Answer. Yes; I bid at random on most of the tracts, and they were struck off to me as the highest bidder.

Question. And you sold them to Mr. Rich, as you have stated, and assigned the certificates to him?

Answer. I made the transfers as I have already stated.

Question. When did you meet Mr. Thornton Conrow?

Answer. I think it was in the autumn of 1870, and was merely introduced and passed a few words. I never had any business transaction with Mr. Conrow.

Question. Was Mr. Conrow present on the 24th of Sept., 1869, at the sale?

Answer. No; I think not.

896 Question. Were any of the plaintiffs present at this sale?

Answer. I don't know any of the plaintiffs.

Question. Do you know when this suit was commenced, and have you ever seen the bill?

Answer. I don't know anything about it; I have never seen (the) bill; but at the former examination, conducted by Judge Ferguson, the attorney for the defendants quoted some items in the bill which referred to the charges of conspiracy in which I was named or implicated.

Re-examination by Mr. BUTTRICK:

Question. State whether at the time of the sale of the lands in question and your purchase of the same you were advised of the title you would acquire by such purchase.

(Mr. Keator objects to the question.)

Answer. I was not advised any further than what appears in my preceding testimony.

Question. Did you not know that you would acquire only such title as the party in whose names the parties charged with taxes had and no other?

Answer. I had no such information, for that is not a fact in this State, and I had no other experience.

Question. Please state if you had any correspondence with Jno. B. Shreeve in relation to the lands in question prior to your visit to him in May, 1869.

Answer. No; I had no previous correspondence or communication of any kind with him.

By Mr. KEATOR:

Question. I suppose you do not know that the plaintiffs in this case were not at this sale?

Answer. No. Many persons were there who were strangers to me.

Question. Do you know the Wood brothers, defendants in this case?

Answer. No; I don't know where they live. I don't know
897 any of the defendants but Benjamin Rich.

By Mr. BUTTRICK:

Question. State whether any of the persons in whose names the lands in question were charged or any one representing them were present at this sale or made any bids on the lands you purchased.

Answer. There were competing bidders there.

Question. Was any one there to your knowledge representing Wm. McClary, George Messingbird, Henry Banks or Welch, or were they either of them there themselves?

Answer. I do not know of any persons being there at the time, claiming to represent any or either of these tracts named.

ALBERT OWEN.

"EXHIBIT A." E. M. Blanchard, Examiner, Nov. 21, 1888.

5th section of the 9 article of the constitution of West Virginia:

"All lands in this State heretofore vested in the State of Virginia by forfeiture or by purchase at the sheriff's sales for delinquent taxes and not released or exonerated by the laws thereof or by the operation of the preceding section may be redeemed by the former owners by payment to this State of the amount of taxes and damages due thereon at the time of such redemption within five years from the day this constitution goes into operation, and all such lands not so released, exonerated, or redeemed shall be treated as forfeited and proceeded against and sold as provided in the third section of this article."

Mr. A. S. Barnum.

DEAR SIR: Mr. J. B. Shreve showed me your letter, and as I have been in the senate of our State for a number of years, wished
898 me to explain some of your questions. I give you a true copy of the 5th section of the 9th art. of the const., which shows that all lands, however great the amount, were redeemable within five years from the adoption of our constitution, which commenced to run from the 20th of June, 1863; "or by the operation of the preceding section," as alluded to in the 5th section, has reference to lands under a thousand acres, may be redeemed without paying any back taxes to the State.

Now, you will very readily see that all lands put on the commissioner's books before the 20th of June, 1868, and the back taxes (if any) paid to the State, that the same is perfectly redeemed; but if taxes be not paid since that date, then the sheriff will sell them for non-payment of taxes, and after twelve months from such sale the

recorder (on behalf of the State) will make a deed to the purchaser (if the same be not redeemed within the said twelve months). If any person goes to the sheriff before the day of sale they can get a *sur*tificate of redemption by paying simply the am't of taxes, and the sheriff cannot take more; but if sold on the day of sale the sheriff is in a hab*b*it of striking it off to the person who bids the am't of the taxes, for that is all he wants, and if the original owners of the land are not present (which they seldom ever are) the person who knows where the land is and bids the amount of taxes against it, — is at once bid off to him, for every person who buys lands at such sales must find the lands for themselves. The State does not undertake to hunt up any land, and therefore it is that persons who know*s* nothing about where such lands are *is* not agoing to bid on them. I am satisfied that Mr. Shreve has had several tracts of land redeemed and is the only person living who can find and identify them, for he is one of the oldest surveyors in our country and perhaps knows more about the land of this country t-an any man now living. In regard to the 3,000 acres spoken of in your letter, from what he tells me I have no doubt but the recorder will ma*d*e
899 the deed at any time, and if so the title will be perfectly good.

I will just say here that under our laws a deed made by the recorder conveys all the right, title, and interest that was in any way possessed by the original owner.

Very respectfully yours, &c.,

D. D. T. FARNSWORTH.

P. S.—I will say stil- further for your information that when land so sold by sheriffs for non-payment of taxes that if the original owner (and no other person can redeem it) applies within the 12 month- to redeem said land they must pay all expenses to which the purchaser has been put in identifying the land, with 6 per cent. interest and 20 per cent. damages.

D. D. T. F.

EXHIBIT "B." E. M. Blanchard, Examiner.

Nov. 21ST, 1888.

This agreement between John B. Shreve, of Upshur county, in the State of West Virginia, of the first part, and Albert Owen, of the State of Pennsylvania, of the other part, made this first day of May, A. D. 1869, witnesseth:

That whereas, the said John B. Shreve, a surveyor of lands is in possession of the original plots, records and field-notes of the two first surveys of Randolph county (embracing parts of Upshur, Webster and Braxton counties) and having been on the ground and shown by one of the old surveyors many of the corners in the surveys made from the year- 1787 to 1795; and having under the laws of West Virginia entered upon the commissioner's books in the counties aforesaid sundry tracts of land, to wit: one tract of 12,500 acres in the name of George Messingbird; one tract containing

105,000 acres in the name of James Welch; one tract of
900 100,000 acres in the name of Wm. McClary; one tract containing 100,000 acres in the name of Alexander Walcott; three tracts containing 110,000 acres in the name of Benjamin Reede; one tract containing 100,000 acres in the name of Joseph Titball; and one other tract of the same name of 20,000 acres; one tract of 50,000 acres in the name of Robert Patton; one tract in the name of Wm. Bridges, containing 30,000 acres; one tract containing 30,000 acres in the name of Wm. Bowen; and one tract of 200,000 acres in the names of Charles Sims and Charles Lee, which said tracts of land will be subject to sale during the present year for delinquent taxes, now the said John B. Shreve agrees to survey, plot and identify to the said Albert Owen or others under him the several tracts of land herein named, and to give to the said Albert Owen the use of the old record book and all plots, papers and field-notes, &c., in the possession of the said Shreve, and also to show to the said Albert Owen or others under him, the original corners identified to the said Shreve by one of the old surveyors upon the ground, and by chain-carriers who were along when the said surveys were made. And the said Albert Owen herein agrees to pay the said John B. Shreve two thousand dollars for each and every tract of land surveyed, identified and plotted as aforesaid of one hundred thousand acres, and in the same proportion for larger or smaller tracts surveyed, identified, plotted, &c., in the following manner, to wit: The said Owen is to pay the said Shreve seven hundred and fifty dollars to defray expenses when each survey is made; and when the said Owen or any one for him shall purchase at the tax sales tracts of land so surveyed, then the said Owen is to pay to the said John B. Shreve an additional sum of twelve hundred and fifty dollars for each one hundred thousand acres so surveyed and identified, by showing the plots and records aforesaid, and purchased or redeemed as aforesaid.

And the said John B. Shreve further agrees to assist the said Albert Owen in time and information necessary to be done
901 to acquire the said lands by tax title under the laws of the State of West Virginia, and in all matters pertaining thereto the said Shreve is to work for the interest of the said Albert Owen and none others.

In testimony whereof, we hereunto set our hands and seals this the day above written.

JOHN B. SHREVE. [SEAL.]
ALBERT OWEN. [SEAL.]

Witness:
GRANVILLE SHREVE.

Copy. EXHIBIT "C." E. M. Blanchard, Examiner. Nov. 21st, 1888.

902 *List of Lands Purchased by Albert Owen for Taxes at Sheriff's Sale for Webster County.*

Memorandum of real estate within the county of Webster sold this 24th day of September, eighteen hundred and sixty-nine, for the non-payment of taxes thereon for the years 1865, 1866, 1867, and 1868.

Name of person charged with taxes.	Quantity of land charged.	Local description of land.	Quantity of land sold.	Name of purchaser.	Amount of purchase-money inclusive.	
Bryant, Allen C., & Moffit, F. H.	300	Point mountain	300	Albert Owen	$3 40	$3 40
Baker, M. Q.	100	North side of Gauley	100	"	2 38	2 38
Camden, J. N., & B. N. Byrne	3,893	South side " Elk & Holly	3,893	"	35 25	35 25
Same	2,850	Same	2,850	"	22 60	22 60
Ewing, James	1,000	Gauley river	1,000			
Green, Thomas	50	Holly river	50		1 00	1 00
Same	40		40		1 50	1 50
Same	20		20		1 56	1 56
Heyhart, J. P. R.	1,000	Leatherwood	1,000			
Hannah, David's, heirs	1,249	Upper Glades	1,000		3 24	3 24
Hosey, John P.	50	H'd Holly river	50	Money refunded, redeemed, and —	1 65	
Jewit, Solomon	1,000	Bergoo & Leatherwood	1,000		10 16	10 16
Miller, James	100	Both sides of Elk	100		1 40	1 40
Middlebrook, E. & R.	2,000	Elk river	2,000			
Moore, Henry C.	2,100	South creek of Holly	1,200		24 37	24 37
Middlebrook, E. & R.	2,000	No. 19, Elk river	2,000			
Muston, Stephen	500	Straight's creek	500		4 53	4 50
Maury, R. H.	170	H'd Seyer creek	170		5 94	5 94
McCleary, William	100,000	Gauley & Williams river	100,000			
Patterson, Robert	50,000	Waters Holly river	50,000			
Reeder, Benjamin	5,102	" " "	5,102			
Same	5,862	" " "	5,862			
Say, Joseph, & Z. Curtis	25,000	Gauley & Williams river	25,000			
Same	25,000		25,000			
Tappan, Arthur	2,130	Elk river	2,130			
Welch, James	105,000	Glade township	105,000			
Patterson, Joseph	187,000	Waters of Holly river			35 59	$35 59
						$154 54

Received of Albert Owen the above sum of $154 54 cents, it being the whole amount paid by him for the purchase of the lands mentioned in the above memorandum, which includes all tax, interest, damages, and commission and the fees for this. CHAS. McDODRILL, *Sheriff.*

903 UNITED STATES OF AMERICA, }
State of Pennsylvania, County of Centre, } *ss:*

I, E. M. Blanchard, a special examiner duly appointed by the circuit court of the United States in and for the district of West Virginia, do hereby certify that on the 21st day of November, 1888, between the hours of 8 o'clock a. m. and 10 o'clock p. m., at the place named in the caption and at the same place and between the same hours in each of the days to which the taking of said deposition was continued, the several witnesses named in the caption came personally before me and they and each of them were then and there by me first carefully examined, cautioned, and sworn to testify the whole truth in the suit and matter of controversy mentioned in the caption; and thereupon the deposition of each of the said witnesses was reduced to writing by me in the presence of the witness as the same was stated by him, and I then carefully read to each of said witnesses his deposition as so reduced to writing by me and each of them subscribed his name to his said deposition in my presence; and I do further certify that I am not of counsel nor attorney for either of the parties to the suit named in the caption, nor am I in any way interested in the event of said suit and controversy.

In testimony whereof I have hereunto subscribed my name this twenty-second day of November, 1888.

E. M. BLANCHARD,
Special Examiner.

Fees:

Albert Owen, witness 2 days	$3 00
Taking depositions, copies of exhibits by E. M. Blanchard, examiner	25 00
	$28 00
Postage	50
Paid Nov. 22nd, 1888, by E. L. Buttrick, counsel for and on account of complainants	$28 50

E. M. BLANCHARD, *Examiner.*

904 I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true copy of the deposition and exhibits of Albert Owen taken at Bellefonte, Pa., on the 21st day of November, 1888, in the case of Tamlin Braxton *et al. vs.* Benjamin Rich *et al.*, then pending in said court and filed among the papers in said cause on the 1st day of December, 1888.

Seal Circuit Court United States, District West Virginia, Parkersburg, West Va.

In testimony whereof I hereunto set my hand and the seal of said court this 24th day of June, A. D. 1891.

L. B. DELLICKER,
Clerk Circuit Court U. S., D. W. Va.

905 [Endorsed:] Supreme Court U. S., October term, 1891. No. 669. Benjamin Rich *et al.*, appellants, *vs.* Tamlin Braxton *et al.* Stipulation & addition to record. Filed July 11, 1891.

Endorsed on cover: Case No. 13,996. West Virginia C. C. U. S. No. 669. Benjamin Rich, Walter Wood, Richard Wood, *et al.*, appellants, *vs.* Tamlin Braxton & Mary E., his wife, late Mary E. Caperton, *et al.* Filed March 14, 1890.

320
158 375
Record Case

In the Supreme Court of the United States.

No. 669. October Term, 1891.

BENJAMIN RICH, WALTER WOOD, and others, *Appellants.*

vs.

TAMLIN BRAXTON and MARY E., his wife, late MARY E. CAPERTON, and others, *Appellees.*

ASSIGNMENT AND SPECIFICATIONS OF ERROR.

The Appellants assign the following errors in the record of the decrees complained of:

1. The learned Court below erred in holding that the plaintiffs had title to the land claimed at the time they filed this Bill.

2. The learned Court below erred in not holding that the plaintiffs had no title to the land claimed at the time they filed the Bill.

3. The learned Court below erred in not holding that the title claimed by the plaintiffs had been forfeited absolutely to the State of West Virginia, because it had been sold for non-payment of taxes and purchased by the State and was not redeemed at the time the Bill was filed.

Seal Circuit Court Unit

4. The learned Court below erred in not holding that the said title claimed by the plaintiffs had passed to the defendants under Section 3, Article 13, of the Constitution of West Virginia before this suit was instituted.

5. The learned Court below erred in not holding that the defendants were and are the owners of said land.

6. The learned Court below erred in not holding that the plaintiffs had no possession of the lands at the time the Bill was filed.

7. The learned Court below erred in not holding that the defendants had actual and continuous possession of the lands in controversy since 1869, and at the time of suit brought.

8. The learned Court below erred in not holding that defendants' deeds were no clouds upon the title of plaintiffs.

9. The learned Court below erred in not holding that Court had no jurisdiction, and in not dismissing plaintiffs' Bill for want of jurisdiction.

10. The learned Court below erred in not holding that the plaintiffs, by their Bill and Proofs showed no title; no ground for equitable jurisdiction because by their Bill they averred that the defendants had taken possession of the land or a part of it and had sold some of the land and leased other portions and still had possession, and that the defendants' deeds were null and void on their face.

11. The learned Court below erred in not holding that the common law action of ejectment is the only remedy to determine the question of title between the parties.

12. The learned Court erred in holding that defendants' title had been obtained by fraud.

13. The learned Court erred in holding that the circumstances and conveyances which are the basis of defendants' title are marked by any fraud upon the plaintiffs.

14. The learned Court erred in admitting the testimony of John B. Shreve, Andrew McElvaine, Granville P. Shreve, Patrick F. Duffy, Morton Marye, Robert Stiles, Joseph A.

Wingfield, Martin E. Shreve, Albert Owens and James Gilliland.

15. The learned Court erred in decreeing that each and all of the following deeds be set aside as inoperative, fraudulent, null and void, and as clouds on the plaintiffs' title, namely:

1. Deed from James Woodzell, recorder of Webster county, to Benjamin Rich and Thornton Conrow, dated September 28th, 1870.

2. Deed from James Woodzell, recorder as aforesaid, and Benjamin Rich, in part assignee of Albert Owens and G. P. Shreve, dated September 28th, 1870.

3. Deed from James Woodzell, recorder as aforesaid, to Benjamin Rich and Thornton Conrow, assignees of Albert Owens and G. P. Shreve, dated September 28, 1870.

4. Deed from James Woodzell, recorder as aforesaid, to Benjamin Rich and Thornton Conrow, assignees of Albert Owens, dated September 28, 1870.

5. Deed from James Woodzell, recorder as aforesaid, to Benjamin Rich and Thornton Conrow, dated October 3, 1872.

6. Deed from George W. Sawyers, Clerk of Webster County Court, to Benjamin Rich, Thornton Conrow and Walter Wood, dated October 30, 1876.

7. Deed from Benjamin Rich and wife and Thornton Conrow and wife, to Ferdinand F. Sharp, dated 3d of May, 1872.

8. Deed from Ferdinand F. Sharp and wife to Walter Wood, Trustee, dated May 15, 1872.

9. Deed from Thornton Conrow to Walter Wood, dated March 1, 1879.

10. Deed from James Woodzell and Joseph A. Thompson, special commissioners, to Walter Wood, dated November 17, 1879.

11. Deed from Benjamin Rich and wife to Abram Waltman, dated December 13, 1875.

12. Deed from Benjamin Rich and wife to D. S. Robinson, dated October 30, 1879.

For these and other errors appearing on the records, appellants pray that said final decree may be reversed and annulled.

JOHN F. KEATOR,
JNO. A. HUTCHINSON,
Attorneys for Appellants.

OCT 27
JAMES H. McKENNEY
CLE

No. 656

October Term, 1891

IN THE

Supreme Court of the United States

Appeal from the Circuit Court of the United States for the District of West Virginia.

[Record Case, No. 13,996]

Benjamin Rich, Walter Wood, *et al.*,
(Defendants below)
Appellants

vs.

Tamlin Braxton and Mary E., his wife, *nee* Mary E. Caperton, (Plaintiffs below)
Appellees

BRIEF OF APPELLANTS

JOHN F. KEATOR
JOHN A. HUTCHINSON
Attorneys for Appellants

A 29

IN THE

Supreme Court of the United States

October Term, 1891. No. 669.

Appeal from the Circuit Court of the United States for the District of West Virginia.

[Record Case, No. 13,996.]

BENJAMIN RICH, WALTER WOOD, *et al.*, (DEFENDANTS BELOW,)

Appellants,

vs.

TAMLIN BRAXTON AND MARY E., HIS WIFE, *nee* MARY E. CAPERTON, (PLAINTIFFS BELOW,)

Appellees.

Statement of the Case.

This is a suit in equity to try conflicting titles to real estate and obtain the possession thereof.

The prayer of all the bills is that the title of appellants be decreed to be fraudulent, null and void, and that the appellees be put in possession of the lands in controversy from which they are excluded by the appellants.

The appellants, by their answer, deny the jurisdiction, the appellees' title, and the fraud, and set up the title in themselves.

First.—By purchase at certain tax sales of, and consequent deeds for, *inter alia*, the lands in controversy, under a line of title entirely independent of that which is the basis of the appellees' claim.

Second.—By subsequent acquisition, under and by virtue of the Constitution and statutes of West Virginia, of whatever title the appellees may have had, owing to the fact that appellees failed to pay the taxes on their lands, and the same were sold by the Sheriff for non-payment of taxes in the year 1875, and not redeemed within one year thereafter, and thereby became forfeited to the State of West Virginia; while on the other hand, appellants were in actual and continued possession of, and regularly paid the taxes on, their lands for the statutory period, and thereby were, under the Constitution and statutes aforesaid, invested with all titles, up to that time forfeited to the Commonwealth, including that of the appellees, whatever it may have been.

The lands in controversy lie in the counties of Webster and Nicholas, in the State of West Virginia.

This suit was brought in the Circuit Court of Webster county, on August 8, 1881, and removed to the Circuit Court of the United States for the District of West Virginia, on April 3, 1882.

The complainants below, appellants, are the children and heirs-at-law of Allen T. Caperton, deceased.

The defendants below, appellants, were the purchasers at a certain tax sale of, *inter alia*, the lands in controversy, their subsequent grantees of undivided interests as tenants in common, together with certain lessees in possession under them.

There is one original and two supplemental and amended bills upon the record.

The complainants averred title therein to five contiguous parcels of land, viz.

(1) 5000 acres, patented to Abner Cloud, March 10, 1795.

(2) 41,171–½, part of a tract of 153,900, patented to Robert Morris, March 12, 1797.

(3) 2,738 acres, patented to A. C. and D. B. Layne, September 1, 1851.

(4) 9,311 acres, part of 9,330 acres, patented to Austin Hollister, November 1, 1855.

(5) 5,938 acres, patented to Austin Hollister, February 1, 1858.

Averred that Allen T. Caperton obtained title to all of the aforesaid tracts, by divers *mesne*, conveyances recited in the bills, and died intestate, seized and possessed thereof, in the month of July, 1876, whereby his title passed to the complainants as his children and heirs-at-law.

Averred in their second amended bill, filed February 7, 1885, as to above tracts Nos. 1, 3,4, and 5, that all of said tracts, "either before or after the death of the said Allen T. Caperton, and prior to the year 1881 were returned delinquent and sold for the non-payment of taxes thereon, and purchased by the State of West Virginia, and afterwards became forfeited to the said State by the failure to redeem the said tracts, or any of them, within the time prescribed by law; and that after the said tracts of land became so forfeited, these plaintiffs, as the heirs-at-law of the said Allen T. Caperton, deceased, in pursuance of the statute in such cases made and provided, filed their petition in the Circuit Court of the said county of Webster to redeem these said tracts of land, and each of them, from the said forfeiture, and produce to the said Court full and satisfactory proof that they had a good and valid title to said tracts of land, and each of them, superior to all others at the time said forfeiture occurred; and, thereupon the said Court, by an order and decree, made and entered on

the 5th day of August, 1881, allowed these plaintiffs to pay, in the manner prescribed by law, all the taxes, interest, damages and costs charged and chargeable on an against said tracts of land, and each of them, and thereby to redeem the same from the said forfeiture."

And averred a like forfeiture as to tract No. 2 of 41,171½ acres; a like petition in the Circuit Court of Nicholas county, where said forfeiture occurred; a like decree, made and entered on August 11, 1881; the payment of all taxes, interest, damages and costs charged and chargeable on and against all of the said five tracts, including the year 1880; the entry of the said tracts upon the land books, and the payment of all taxes thereon for every year since 1880; and that, at the commencement of this suit the plaintiffs were, and still are, the only true and lawful owners of the said tracts of land and each of them.

Complainants further avered that defendants claimed title to four contiguous, and to a certain extent overlapping, tracts of land, which, taken together, cover and include the whole of the land to which complainants made claim, namely:

(1) 100,000 acres, patented to William McClary, January 21, 1796.

(2) 58,500 acres, surveyed for Henry Banks.

(3) 12,500 acres, surveyed for George Messingbird, May 11, 1795.

(4) 105,000 acres, surveyed for James Welch, June 1, 1795.

That said four tracts were entered upon the land books of Webster County and charged with taxes for the year 1868; returned delinquent and sold by the Sheriff for non-payment of taxes of that year on September 24, 1869, and purchased as follows:

No. 1. By Albert Owens, Granville P. Shreve and defendant, Benjamin Rich, and a deed therefor, made by

the Recorder of Webster County, September 28, 1870, to defendants, Benjamin Rich and Thornton Conrow.

No. 2. By Albert Owens, Granville P. Shreve and defendant, Benjamin Rich, and said Owens and Shreve, having assigned their interest to said Rich, a deed for the said tract was made to said Rich by the Recorder of Webster County, on September 28, 1870.

No. 3. By Albert Owens, Granville P. Shreve and defendant, Benjamin Rich, and the interest of said Owens and Shreve having been assigned to said Rich and defendant, Thornton Conrow, a deed for the said tract was made to the said Rich and Conrow by the Recorder of Webster County, September 28, 1870.

No. 4. By Albert Owens, who assigned to said Rich, who assigned one-half thereof to the said Conrow, and a deed for the said tract was made to the said Rich and Conrow by the Recorder of Webster County, September 28, 1870.

That subsequently a conveyance from William McCleary to Viscount Clifford de Fleury for tract No. 1 was placed on record in Webster County and thereafter the said tract was entered on the land books of said county for taxation in the year 1870, returned delinquent and sold for non-payment of taxes for the year 1871, and purchased by said Rich and Conrow, and afterwards the Recorder of Webster County made a deed to said Rich and Conrow for said tract, October 3, 1872.

That subsequently said Conrow and Rich caused the said tract, No. 4, to be entered upon the land books of Webster County as a tract of 65,734 acres in the name of Francis Highland. In 1874 the same was returned delinquent and sold by the Sheriff for non-payment of taxes, purchased by Benjamin Rich, who assigned to defendants, Conrow and Walter Wood, each an undivided one-third thereof, and a deed was made to the said Rich, Con-

row and Wood by the Clerk of the County Court of Webster, October 3, 1876;

Averred, the divers *mesne* conveyances by which title passed from said Rich, Conrow and Wood to the other defendants, claiming as tenants in common in fee for their respective interests in the four several tracts aforesaid,

Averred, "that the title of these plaintiffs to all of the lands herein described and claimed by them is good and valid, both in law and equity, while the said pretended title of the said defendants and each of them herein stated and described is invalid, fraudulent, null and void for the reasons herein stated and set forth."

The reasons set forth in the bills are the following:

First.—For manifest errors and defects appearing upon the face of the said deeds (*i.e.*, tax deeds), and upon the face of the records and proceedings in relation thereto in the office of the Recorder of Webster County at and after the date of the said supposed deeds, and now in the office of the Clerk of the County Court of Webster County.

Second.—For fraud, combination and conspiracy of the following nature, to wit:

"That sometime in the year 1867 or 1868, John B. Shreve, of the County of Upshur, Webster, West Virginia, * * * having in his possession the books of entries of surveys in the County of Randolph, Virginia, both before and after the year 1800, concocted a scheme to make money by the fradulent and unlawful entry in land books of Nicholas, Webster, Upshur and Randolph counties of large tracks of land patented by the Commonwealth of Virginia, prior to the year 1800, to sundry persons then known to him to be dead and other surveys, prior to said year to sundry persons, for which no patents had been issued."

Complainants further averred that in pursuance of the scheme and of agreements made in the year 1868 by

the said Shreve with divers citizens of Pennsylvania and elsewhere, named in the bill, none of whom are parties to these proceedings, the said Shreve, without any authority or request from any one interested therein and in plain violation of law, fraudulently and corruptly caused to be entered on the land books of the said County of Webster, and charged with taxes for the year 1868, said tracts 1, 2, 3 and 4, claimed by defendants.

That all of said tracts, if the persons in whose names they are assessed ever had title, had long before the formation of the State of West Virginia been forfeited to the State of Virginia for non-payment of taxes thereon, and for failure of the owners thereof to have the said tracts entered upon the land books of the proper counties for taxation, and that said tracts had never been redeemed from said forfeiture, "whereby the said tracts of land became and were the absolute property of the State of West Virginia * * * at the time the said tracts of land and each of them were entered in said land book by said John B. Shreve."

Claimants further averred: "That the said tracts of land, * * * * having been returned, delinquent as aforesaid, were certified by the Auditor of West Virginia to the Sheriff of Webster County, for sale in the year 1869, and the same were accordingly advertised by the said Sheriff for sale at the Court House of said Webster County on the 24th day of September, 1869, of which sale the said Shreve promptly informed his said associates. * * * * including the defendant, Benjamin Rich, who had shortly before that time become one of his associates for the purchase of the said lands."

That the said Owens, Rich and Granville P. Shreve, who were the purchasers above mentioned, had notice of the alleged fraudulent and unlawful acts of said John B. Shreve and of the assessor of Webster County, and aided and abetted them therein, and whether they had such notice or not they were bound by the doctrines of *caveat*

emptor and could not acquire a valid title to the lands purchased by them.

Complainants further averred: That somebody, at the instance of some of said purchasers, caused the words "taxes paid" to be written on the above advertisement of sale posted at the Court House opposite the four tracts claimed by defendants, for the purpose of preventing competition in bidding, and that they had the effect intended.

And further averred, that to enable the purchasers

"To purchase the said tracts of land at the smallest possible sum, the said Shreve, fraudulently and corruptly, caused and procured to be omitted from the land books," and not to be entered and charged thereon with taxes, as to tract No. 1, for the years 1869 and 1870, and as to the three other tracts, for 1869, 1870, and 1871.

And further averred: That the patent to William McClary for tract No. 1, of 100,000 acres, "was and is an inclusive grant, and excepted from its operation 37,052 acres, and was issued on the 21st day of January, 1796, while the said patent to Robert Morris, under which the plaintiff's claim was issued on the 25th day of March, 1795, and included within its boundaries a large portion of the said 100,000 acres, afterwards surveyed and granted to said McClary, as aforesaid, and, even if the said McClary, or any one claiming under him, had ever had the actual possession of the said 100,000 acres, to the exclusion of all others, which they, however, never had, the plaintiffs are advised and believe, and so charge, that the title to the said 37,052 acres, excepted from the said patent, would never have passed thereby to the said McClary, or those claiming under him; that the said 77,104 acres, granted to Robert Morris as aforesaid, conveyed to said Allen P. Caperton as aforesaid, by the said John Williams and wife (whereof appellees now claim title to only 41,171½ acres), also included a large portion of said 100,000 acres, granted to said McClary, but how much of said

100,000 acres is so included, these plaintiffs are unable to say ; but the amount so included is largely over that said 37,052 acres."

And further aver (see paragraph 16 of the original bill, p. 9 printed record) " that, until within the last year, none of the defendants have attempted to take possession of any part of the lands aforesaid and, until that time, neither of them, either by themselves or by their tenants, or otherwise, occupied in any way part thereof by possession or actual claim, that within the past year said defendants, or some one of them, pretended to sell by executing contract to the defendant, Andrew Wayne, 300 acres, part of the said 58,500 acres, and placed the said Wayne and Thomas Myers in possession thereof, and the said Wayne is still in possession * * * that the said Rich and others leased to defendants, Jesse Hammond, Adonijah Cogar, a certain part of said lands at the forks of Williams River and the said Hammonds and Cogar now live in the land leased to him as aforesaid."

These averments are repeated in substantially the same language in complainant's first amended bill, pages 72 and 73 of printed record, and in their second amended bill, pages 172 and 173.

Complainants in conclusion aver :

"Said pretended title of said defendants to all the land owned, held and possessed by these plaintiffs, as aforesaid, and the boldness and affrontary with which the said defendants assert the same, constitutes a serious and damaging cloud upon the title of these plaintiffs to these lands."

And pray " that each and all of the said pretended deeds, contracts and leases under which they and each of them claim, as aforesaid, be set aside, recalled and annulled as inoperative, fraudulent, null and void, as to these plaintiffs, and that the cloud thereby created on the said title

of these plaintiffs in the lands in question be declared to be removed therefrom, and that the said plaintiffs * * * be granted and confirmed in their said title to the said tracts and parcels of land, owned and possessed by them, as aforesaid, and hereinbefore mentioned and described; that a writ of *habere facias possessionem* be awarded them against the said defendants, and each of them, and against all other persons on said lands, or any part of them, claiming under, by or through the said defendants or either of them, and in order that these plaintiffs may have the full and undisturbed possession of every part and parcel of their said lands."

Complainants nowhere aver that they were in actual possession of any part of the lands in controversy at the time this suit was instituted, either in person or by tenant; they aver merely a constructive possession.

Neither do they aver that there is any doubt or difficulty as to the production of any of the documentary or other evidence of their title, nor that any facts, properly of record, are not all provable by the record, nor do they aver any contract or equity between themselves and appellants; nor that the tax sales complained of had apparently passed to appellants any title, or claim of title, which had vested in their ancestor, Allen T. Caperton, and ought to remain unclouded in them, nor do they aver any obstacle or embarrassment removable only in a court of equity, nor any ground or reason why their alleged title could not be fully established and adequately protected in a single action at law.

The Answers.

The answers of Benjamin Rich to the original Bill (Record p. 58), to the first amended and supplemental Bill (Record p. 148, etc.), and the second amended and supplemental Bill (p. 225, etc.), are responsive to the Bills in every particular.

They deny the title of complainants because the Bill and Exhibits show that complainants' land was sold for taxes, the portion in Webster County, October 5, 1875; the portion in Nicholas County, October 13, 1875, bought in by the State and not redeemed within one year from the date thereof, and thereby became, on the expiration of said period, forfeited to the State of West Virginia; and that the alleged proceedings of redemption, taken in the year 1881, were without warrant of law and ineffectual to the purpose; that the title of the State of West Virginia once acquired by forfeiture as aforesaid cannot be divested except in one of two ways, viz:

(1) By the sale of the land at public auction to the highest bidder upon proceedings, instituted in the Circuit Court of the county where the same are situated, as provided in Article 13, Section 4, of the Constitution of West Virginia, which was not done and is not averred to have been done.

(2) By transfer under the provisions of Article 13, Section 3, of said Constitution, by the terms whereof such transfer could not have inured to the benefit of the said Caperton or to complainants claiming under him, but did inure to the benefit of respondents. And, thereupon, the respondent laid claim to the very title set up by complainants so far as they ever had title, as follows:

"That the title thereto, if your respondent in no other way had acquired it, passed to him, and those claiming under and through him, under and by virtue of the provisions of Article 13 of the Constitution, because of his actual possession and the payment of taxes, as therein re-

quired, whereby the State did transfer to him, and those claiming under him, such title as it had, by reason of the forfeiture aforesaid, and by reason of such possession and payment of taxes.

Deny further that Allen T. Caperton, complainants' ancestor, ever had any title to any part of Tract B, of 153,-900 acres, patented to Robert Morris, and particularly except to certain of the conveyances, through which complainants claim to have derived title, as insufficient for the purpose, viz: those whereof copies were attached to the Bill as Exhibits 36, 37, 38.

Deny that any title which Allen T. Caperton is alleged to have had descended to complainants, because it is admitted in the Bill that such title was, at the time of his death in July, 1876, forfeited to the State of West Virginia, and deny that complainants have in any manner reacquired the said title.

Admit that defendant Rich purchased tracts Nos. 2, 3 and 4 in conjunction with Albert Owens and Granville P. Shreve and their interests had been assigned to him, but deny that he so purchased tract No. 1, of 100,-000 acres, and averred that he had purchased that tract alone and for himself.

Deny all charges of fraud, direct or constructive, conspiracy and combination, and all knowledge of or complicity in any fraudulent or unlawful acts whatsoever, any knowledge of or acquaintance with John B. Shreve, or to the lands in controversy, their entry and assessment for taxes, or their delinquency, until a short time before their sale, and after they had been advertised for sale, and after their liability to sale had been fixed and determined, and avers that in his purchase of said lands he believed in and relied solely upon the propriety of the conduct of the State officers in relation to the assessment and sale thereof.

Aver that his entire connection with Owens, Granville P. Shreve and Conrow consisted in his joint purchase

with them of defendants' lands, and the tranfer by Owens and Granville P. Shreve of their interest to him.

Aver that if there had been any frudulent or unlawfnl acts, or any irregularities connected with the entry, assessment, returned for sale and conveyance of the said lands, complainants could not take advantage thereof because they were and are strangers to the titles sold.

Aver want of knowledge as to how much of the lands claimed by complainants lie within the boundary of defend- and calls for proof.

Aver actual and continued possession by tenants of the lands claimed by defendants ever since the year 1870, and the payment of all taxes due thereon for each year thereafter, to an amount exceeding $19,000, at the time answer was sworn to in January, 1886.

The answers of Walter Wood and the other defendants (Record, p. 238, etc.) aver that they were *bona fide* purchasers for valuable consideration of their respective interests, without notice of any fraud, and that before the commencement of the suit they had never heard of John B. Shreve, nor of any connection of his with the entry and sale of said lands, or of any combination or arrangement by him with other persons of any kind for any purpose whatsoever.

Denied upon information and belief all charges of fraud and conspiracy, and called for proof.

Averred actual and continued possession of all the lands claimed by defendants, and payment of all taxes thereon since 1870.

And in other respects conformed to the answer of Benjamin Rich.

The answers of S. Morris Waln and Howard F. Conrow, administrators of Thornton Conrow, deceased (Record, p. 301), conformed with the foregoing answers, except as to the following and additional averment:

That A. T. Caperton, in 1872, was informed by his agent that defendants had purchased the McClary and

De Fleury titles, and had taken possession of the lands in question, and were paying taxes thereon. That Caperton never brought any action or attempted to get possession, and paid no taxes on the said land from 1874 to 1881, inclusive. (See printed Record, pp. 417, 418, 419, deposi- of Sawyers.)

Analysis of Testimony of Plaintiffs below, Appellees,

1. On the Alleged Fraud and Conspiracy.

The testimony offered by plaintiffs showed that John B. Shreve, a citizen of Upshur County, West Virginia, an old county surveyor, but occupying at the time no official position, caused to be entered on the land books of Webster County, for taxation, in the year 1868, the McCleary, Banks, Welch and Messingbird tracts, substantially as charged in the bill.

The lands having been returned delinquent were advertised for sale. In May, 1869, Albert Owens, of Pennsylvania, came to West Virginia on a prospecting tour. He was referred to Shreve, made his acquaintance, learned from him that these and other lands had been returned delinquent and would be sold during the year. Shreve advised Owens to purchase at the sale, and offered to identify and survey such tracts as Owens might purchase for two cents an acre. (Vid. Owens, testimony in Printed Record, 467 to 478.)

As a recommendation of his character, skill and knowledge of the country, he showed Owens a letter from Mr. Farnsworth, Speaker of the Senate of West Virginia and Acting Governor of the State (See Printed Record, p. 483). Farnsworth subsequently confirmed this letter in conversation with Owens, and encouraged the latter to believe that a good title could be obtained to lands in the

state at a tax sale, and in support of his opinion gave Owens a copy of the code of West Virginia. Owens received Shreve's suggestions favorably, and determined to raise funds for the purchase of some of these lands, and agreed to employ Shreve to locate and survey such of them as he or his friends might buy, and to pay Shreve as stipulated for so doing. This agreement was in writing, dated May 1, 1869. (Record, p. 484.) At that time neither Owens or Shreve knew appellant Rich. Owens met Rich in the midsummer of 1869, told him of the approaching sales, and pursuaded him to accompany said Owens to West Virginia, and attend the sale which had been set for September 24, 1869. The agreement between Rich and Owens was not a definite one beyond this: that they should purchase what they might conclude to purchase on joint account. Owens was to do the bidding; Rich was to furnish the money. Owens told Rich that he had an arrangement with Shreve, but did not exhibit the contract nor explain its terms until December, 1878, but he explained to Rich that Shreve had special knowledge of the lands and could locate them as no one else could. (See Printed Record, p. 346 and 347.)

On arriving in West Virginia a day or two before the sale, Owens introduced Rich to Shreve, and after canvassing the situation Rich concluded to buy, and, with the approval of Owens, did buy the McCleary tract of 100,000 acres in his own name, and on his own account solely and the Sheriff's certificate was made out to him alone. In conjunction with Owens and one Granville B. Shreve he bought the three other tracts, and the two others subsequent assigned their interests in him before the deeds were made. It was not shown upon what terms Granville P. Shreve had become a party to the original purchase. But Rich assigned to defendant, Conrow, one-half of his interest in three of the tracts, and on September 28, 1870, the Recorder of Webster County made deeds to these two persons for the McCleary, Welsh and Messingbird tracts,

and to Rich alone for the Banks tract. (Printed Record, pp. 25, 26, 27, 28, etc.)

Owens bought a good many other tracts aggregating a large amount, but they are not in controversy here.

Rich had no agreement of any sort with John B. Shreve at the time of sale, nor did he ever have any agreement with him until June, 1871, long after he had obtained his deeds for all the land purchased at the sale in September, 1869. (Printed Record, p. 346.)

This agreement had reference to lands to be sold for delinquent taxes in the fall of 1871 in Webster, Randolph and Upshur counties. Rich then agreed to pay Shreve from one to two cents on an acre for identifying and surveying such tracts as he (Rich) might conclude to buy at the sale of that year. He bought a number of tracts at the sales of that year in the different counties, aggregating over one-half a million of acres, none of which tracts are in controversy here.

At the sale in 1869, however, Rich had agreed with Owens to assume the payment of $2,000, which under the latter's agreement with Shreve, was to be paid for the identification and survey of the McClary tract, if purchased, and subsequently, in August, 1870, when the interests of Owens and Granville P. Shreve in the other lands in controversy claimed by defendants were assigned to Rich, he assumed the payment to Shreve of the entire compensation for the said work of identification and survey on all the tracts. He made certain payments on account in cash and goods, and on June 8, 1871, gave his note for the balance, and also subsequently, in 1872, gave another note for $5,300, for similar services in respect to tracts not in controversy and purchased in 1871, as above mentioned, with the verbal understanding that payment should not be demanded on either note until he (Rich) sold his lands. Litigation arose subsequently between Shreve and Rich, over these notes, but the contention has no bearing on this case.

The McClary tract was not assessed for taxes in 1869; but in 1870, it was assessed for taxes in the name of Viscount Clifford De Fleury. It appeared that after Rich had purchased this tract in 1869, a deed was filed of record in Webster County, which purported to convey the title of the McClary tract to De Fleury. This deed was not offered in evidence, nor was the precise date of the record shown; but the Recorder, in pursuance of the duty imposed upon him by law, added the tract to the assessor's list of taxable lands for 1870. It was the duty of the Recorder to examine and correct said lists. The taxes for 1870, were not paid and the Recorder, in making up for the Sheriff, the list of delinquent lands for 1870, returned this tract as delinquent and charged it also with back taxes to the State for 1869, although no back taxes had been set down in the assessor's list for 1870.

The assessor's list, or "land book" for 1870, was executed in triplicate; one for the Recorder, one for the Sheriff, and one to be filed in the office of the Auditor of West Virginia. (See Assessor McElwain's testimony in Printed Record, p. 307.)

The Recorder's copy was taken out of the office for use in certain criminal proceedings before a Justice in distant part of the county and never returned. (See Recorder Woodzell's testimony, Printed Record, p. 316.)

The Sheriff's copy was lost; but the copy in the Auditor's Office proved to be entirely regular, and showed the assessment as above stated. (See Auditor Duffy's testimony, printed Record, p. 367, etc.)

The entry in the name of De Fleury was not in alphabetical order, but appeared between the letters of "M" and "N"; it was the only entry out of alphabetical order in 1870, but the Auditor testified that the land books for other years contained entries out of alphabetical order.

There were no erasures or corrections in the figures and footings of the land book which indicated that the

entry had been made after the same had been sworn to and certified to by the Assessor, Recorder and Justice. That portion of plaintiff's contention broke down completely. (See cross-examination of P. F. Duffy, Auditor, p. 368–9.)

This tract was also set down between the letters of "M" and "N" on the list of delinquent lands for 1870, returned to the Sheriff. The charge for back taxes of 1869, was first made on this list; no county taxes were charged. The page containing the entry and the entry itself were in the handwriting of the Recorder. No erasures or other alterations appeared on this page.

No evidence was offered to show why the tract was not charged with taxes for 1869, nor anything else in connection therewith, except what the records themselves show; nor was there any testimony to show that it was entered for 1870 for any other reason than because the Recorder, in the performance of his duty, had regard to the deed recently filed and corrected the Assessor's inadvertent omission accordingly. (Recorder Woodzell's testimony, p. 428, etc., of Printed Record.)

The tract was sold by the Sheriff and bought in by Rich and Conrow September 26, 1871, and the taxes thereon, including the year 1871, were duly paid thereafter.

The Banks tract was not charged for taxes for the year 1869 and 1871, but was charged for 1870 and for the year subsequent to 1871 and the taxes paid by Rich and his associates. It was not charged with taxes in the year 1880, but the back taxes for that year were charged against the land in 1881, and subsequently to the institution of this suit, the land was sold for taxes of 1880 and 1884, and purchased by an appellant, Walter Wood, in November, 1885. All taxes for 1872 to 1885, inclusive, were thus shown to have been paid.

The Welsh tract was duly charged on the land books from 1868 to 1873, inclusive, as 105,000 acres; in 1874 it

was charged in the name of Francis Highland as 65,734 acres, returned delinquent, sold by the Sheriff and purchased by appellant (Rich) in 1875.

It appeared that Rich had some doubts as to whether the tract ought not rather to have been assessed in 1868 as 65,734 acres in the name of Francis Highland, assignee of Banks, and purchased the tract over again to avoid any question.

This doubt was not justified under the laws of West Virginia, which provide that a tax sale in the name of a former owner shall pass the title of a grantee or others claiming under the said former owners, who have not paid taxes on the land for the year in question.

The same doubt seems to have dictated to Rich the second purchase of the McClary tract when sold in 1871 in the name of De Fleury; the observation just made applies to this purchase also.

But whether the doubt was justified or not, the whole matter is entirely irrelevant to a charge of fraud and shows nothing more than a natural desire on the part of Rich to perfect as far as possible, and beyond all question, the titles he had already purchased at a previous sale.

There was not a shred of testimony to show that Rich, who was a non-resident, was in any way connected with the entries of the two tracts in the names of De Fleury and Highland respectfully, or that the proceedings were dictated by any one other than the proper officers acting in the line of what they conceived to be their duty respecting the proper manner of assessing these lands and collecting the taxes thereon. And Rich, accepting their conclusions, purchased in the second instance as he did in the first.

Lands in Webster County were first assessed for taxes under authority of the State of West Virginia in 1865, The lands claimed by appellants were not assessed till 1868, and no back taxes were then charged against them.

Taxes were paid on the Missingbird tract by appellants until they having ascertained that it was entirely in-

cluded within the boundary of their three other tracts, they suffered it to become delinquent and allowed that title to become forfeited to the State.

The bill charged that on the list of delinquent lands displayed at the sale in 1869, the words "taxes paid" or "redeemed" were written opposite the names of the tracts subsequently purchased by defendants in order to deter others from bidding, and that they had this effect. The testimony showed this charge to be absolutely without foundation. It was shown that persons were present who were redeeming their lands and doubtless such words were written somewhere on the list and quite properly. But James Gilliland, a very willing witness for plaintiffs, could not say that the words were written opposite the name of any of defendant's tracts, and Albert Owens denied that such was the case. (Printed Record, p. 358.)

The testimony of James Gilliland (p. 324) was absolutely irrelevant, as it merely tended to show that in 1867 and 1868, John B. Shreve had entered into negotiations with certain persons in Pennsylvania and endeavored to induce them to purchase lands at the sale of 1869, and to pay him for such services as he might render in identifying and surveying such lands, and advanced him some money on account. None of these persons made any purchases and none of them were connected in any way with Owens or with Rich and his associates.

It clearly appeared that Owens never heard of these lands until May, 1869, long after their status as delinquent lands liable for sale had been fixed, and that he was absolutely unconnected with anything Shreve had done in causing them to be assessed for taxes. That Rich knew nothing until midsummer, 1869, when Owens made his acquaintance, and advised him to buy at the approaching sale. Rich had never heard of John B. Shreve before, and never met him, nor had any communication with him until he went to West Virginia for the first time in his

life, a few days before the sale, in September, 1869. (P. 346–349, Printed Record.)

On his way to Webster County Court House, Rich consulted Mr. Walker, an attorney at Clarksburgh, who referred him to Judge Lee, an attorney of West Virginia, who, being consulted, advised him that a good title might be obtained at the sale, if the lands could be identified. Having received this advice, and being persuaded that Shreve could identify these lands, he determined to buy, and afterwards agreed to pay Shreve for identifying and surveying. (349 *supra*, P. R.)

There was not an intimation that either Owens or Rich ever heard of Allen T. Caperton, or of his claim to these lands, until long after the sale, or, indeed, until this suit was begun. Although it clearly appeared from the testimony of George M. Sawyer that Allen T. Caperton knew of the assessment of these lands, of their delinquency, and of their advertisement for sale, and permitted the sale to go on without protest, and that subsequently he was promptly informed of defendants' purchases, yet never informed them of his claim, nor did anything beyond a secret effort, through said Sawyer, to corruptly induce, by the promise of $200, one Mullins, a tenant under Rich to abandon his tenancy, and thus relieve Caperton "from bringing ejectment against Rich."

This last circumstance, testified to by plaintiff's own witness, is a direct contradiction to the charge in the Bill that defendants had never attempted to take possession of their lands until shortly before suit brought. (See Sawyers' testimony, p. 418, 419 of Printed Record.)

And with full knowledge of all the circumstances, and of defendants' possession, said Caperton suffered his lands to become delinquent for the year 1874, and to be sold for taxes, October 5th and 13th, 1875, to be purchased by and forfeited to the State, and neither he nor his heirs ever offered to redeem the same, nor to pay any taxes

thereon until the year 1881, directly before the beginning of this suit.

The testimony of the Register of the Land Office and of the Auditor of the State of West Virginia shows that no grants had ever issued on the Messingbird and Welsh surveys, but had issued upon the McClary, and upon the greater part of the Banks surveys; that the McClary tract had been assessed for taxes from 1840 to 1850, returned delinquent, sold for the taxes of the decade, purchased by the State, remained unredeemed, and was finally dropped from the land books in 1860.

The other tracts claimed by defendants do not appear to have ever been assessed for taxes before the year 1868.

John B. Shreve who originally caused defendants' land to be assessed for taxes in 1868, never became interested in the purchase thereof at the sale nor subsequently, and is not and could not be a party to this suit.

Owens is not a party to the suit and has no present interest in any of the lands in controversy and never had any more than a nominal interest, as Rich furnished all the money and with defendant Conrow took title from the Recorder in 1870 on the expiration of the statutory year after the sale.

None of the defendants, except Rich, ever had any negotiations or dealings of any sort with Owens or Shreve They acquired their titles through Rich after the sale. Conrow came in between the sale and the making of the deeds in 1870; the other defendants acquired their respective titles subsequently, for valuable consideration and in good faith.

The whole charge of fraud and conspiracy then comes down to this: That John B. Shreve caused these tracts to be assessed for taxes in the year 1868, hoping and expecting that they would be returned delinquent, sold for taxes and purchased by somebody who would pay him for identifying and surveying them; that after the lands became delinquent and were returned for sale, Owens, and

through Owens, Rich learned of the fact and determined to buy at the sale; that they did buy and could not locate the lands themselves, and as Shreve was the only man who could locate them, they agreed to pay Shreve for so doing and did pay him. That subsequently two of the four tracts having been assessed in the names of persons who appeared to be grantees of the persons in whose names they had originally been assessed and sold, Rich bought in these two tracts a second time; that he subsequently conveyed undivided interests to the other defendants.

If it is a fraud to buy land at a tax sale in West Virginia without the permission of the Caperton family, defendant Rich is guilty, otherwise not.

Analysis of the Testimony of Plaintiffs below, Appellees.

2. On the Subject of Possession.

James S. Craig, testified that he took charge as agent of the Caperton lands, lying in Nicholas County, in 1877, and of those lying in Webster County in November 27, 1880.

Witness did not live on the land. On August 3, 1881, two days before suit brought, the witness executed two formal leases of part of the Caperton land, one to Daniel Hammons for 9330 acres, and one to William Mullins for 11,459 acres. The witness did not say whether these lessees went into possession or not.

The witness said that he sold to N. T. Smith 200 acres out of Caperton tract and gave him possession of the residue, but did not say whether it was before or after suit brought.

Witness said he sent Wilber Baldwin a written lease by mail, which, however, he said Baldwin did not receive. Witness did not say when he sent this lease. Baldwin had been living on the land some time before the lease was sent, and had left the premises about a year before the witness delivered his testimony and had been succeeded in possession by the other persons, the nature of whose holding did not appear.

Witness described this 300 acres as a part of a detached lot of about 12,700 acres of lands claimed by the plaintiffs, as to which they set forth no title, and which are marked in red (see map, page 218), and very slightly overlap the extreme southwestern corner of the McClary survey. There is no testimony that Taylor's said improvement is not entirely outside of the McClary line.

Witness said that he had settled quite a nice little colony on the 41,171 acres, but did not say when he had settled it, not who the tenants were, nor what was the character of their possession, but added: "I have James Mullins there looking after that part of the land, ranging cattle and watching timber."

The only other act to which the witness testified was his continuance of the authority granted to one Samuel Hinkle by M. Triplett, as agent for the Capertons to look after these lands, which authority the witness incorrectly described as an informal lease, as will appear by reference to the testimony of Hinkle and to the language of the instrument itself, on page 403.

SAMUEL HINKLE, page 402, testified that he had lived on the Caperton lands since 1868, but outside of the lands claimed by Rich and that he had never lived upon, cultivated or improved any part of the McClary survey.

The witness had bought 300 acres of Caperton by a verbal contract, and that said Caperton did nothing else but direct him to keep as his own the part he had contracted for and take general supervision of the whole of the Caperton lands and keep trespassers off.

Witness said he had once warned trespassers off a part of the Caperton lands, but did not say when he had done so, nor locate the spot, so that it could be ascertained whether it was or was not within the boundaries claimed by appellants.

GEORGE M. SAWYER (p. 314) testified that in 1873 he had sent to Caperton a copy of a lease made by Benjamin Rich to one William Mullins; that Caperton offered witness $200 to get Mullins off the land so that he would not have to bring ejectment against Rich; that afterwards learning that Mullins had moved witness, July 8, 1874, as agent for Caperton executed to Mark Hammons a lease of the same land that William Mullins formerly resided on under Caperton. (Pp. 314, 319.)

That this lease was approved by Caperton, July 20, 1874.

The witness testified that he knew and that Caperton knew that Mullins had claim to hold possession of the land under Rich, so that the description in the lease is incorrect; and that witness knew that Mullins was in possession of the land under Rich in 1873, and had been occupying the improvement from three to five years before witness leased to Mark Hammons, and that Peter Hammons, Sr., and Jesse Hammons, Sr., were in possession of the land claiming under Rich at the time the witness was giving his testimony.

The witness did not know that Mark Hammons had ever been in possession of the land, nor if he had when he had left it; but the original lease offered in evidence (p. 319) bore two endorsements.

First, an assignment by Mark Hammons to M. J. Stiltner, May 14, 1875, and second, M. J. Stiltner to R. C. Clevinger for one-half, September 21, 1876.

R. C. CLEVINGER (page 386) testified that in 1876 he lived with M. J. Stiltner, on the Allen T. Caperton lease, which Stiltner got from Mark Hammons at the fork

of Williams River, and by authority of the said lease, which was assigned to witness as above stated. Witness said he remained on the premises from December, 1875, to March, 1877, and left them in the care of Stiltner, who, the witness had heard subsequently sold the improvement to Peter Hammons, who, the witness thought, assigned to Jesse Hammons, who, assigned to John Lee, who, assigned to Jesse Hammons, who reassigned a part to Peter Hammons, and that the last two named are now on the lands.

On cross-examination (page 419) the witness declared that he could not remember exactly where Mark Hammons resided in 1876 and 1877; that when Stiltner let Peter Hammons have the lease he did not know by what means it was got; whether he had moved off and Peter Hammons moved in, or whether Peter Hammons had put him out; that Peter Hammons had been on the premises ever since, and that witness had seen him there a year or two after Stiltner left and had seen him there about two months ago.

This witness did not know "what century of the Christian Era" he lived in, and when asked (page 425) what year of the era it was, he said, "1888." His deposition was being taken on September 13, 1886.

Witness said that after he had moved away from the land occupied by him with Stiltner, to the land where witness is now living; he had a conversation with Rich and agreed to hold his present improvement under Rich; that the agreement was made from five to six years ago; he could not say exactly how long. (This would be in 1880 or 1881; see pages 421 and 425.)

Witness was examined September 11, 1886. On page 421 he fixed the date as six years previous; on page 425 he fixed the date as four or five years previous.

The witness said that ten years before, *i. e.*, in 1876, on learning of Rich's claim to the land witness was then occupying, he moved off, but subsequently he moved back and made the agreement above referred to.

This tract was not the Stiltner tract, but yet on page 387 the witness testified that he resided on the Stiltner tract from December, 1875, to March, 1877. So that it is doubtful whether the witness resided on the Stiltner tract during the entire period named.

In reference to the character of the possession by Mark Hammons, under whom the plaintiffs attempted to show that Stiltner and Clevinger had possession, it is important to consider the testimony of Jessie Hammons, brother of Mark Hammons, and a witness offered on behalf of defendants (page 437), who swore that he had occupied the improvement in question since 1869; that he had been claiming under Rich for the last twelve or thirteen years, *i. e.*, ever since 1873 and 1874, and that he put Mark Hammons in possession; so that whatever the written contract was between Mark Hammons and Sawyer as representing Caperton, in point of fact Mark Hammons obtained whatever possession he had by the act of Rich's tenant and representative. Mark Hammons was not called.

Plaintiffs below and appellants did not produce a single witness who testified that he was on the land in controversy claiming under them at the time the suit was brought nor even subsequently thereto. The testimony shows nothing beyond the giving of general instructions to three persons, Hinkle, Sawyer and Craig, to watch the trees as they grew and keep off trespassers if they could and make leases to anybody who would recognize their title.

Analysis of Testimony on Behalf of Appellants, Defendants Below, Concerning Their Possession and Payment of Taxes.

It was shown that eleven persons were at the time of suit brought living upon and cultivating the lands in controversy or lessees of defendants, appellants, viz:

The defendants, Andrew Wayne, Thomas Myers, Jesse Hammonds and Adonijah Cogar, as charged in the bill and admitted in the answer; also Moses N. Barb, Cornelius Hammons, William Mullins, George McFarland, Christopher Baughman, Peter Hammons, R. C. Clevinger.

That three other persons as to whom plaintiffs and appellees claimed that they had at one time been on the land as their tenants had really entered into possession during the time of their occupany by authority of defendants and appellants, viz: N. S. Smith, Wilber Baldwin and Mark Hammons. The occupancy had, in each instance, terminated before suit brought.

PETER B. BARB (p. 435) testified that in 1867 he had taken possession of the piece of land on Leatherwood Creek, which was part of the Banks tract claimed by defendants. He at first claimed under one Mollohan, but in 1870 he agreed verbally with Rich to hold possession under him, not only for his improvement, but of all the Banks tract, and notified Mollohan to that effect at once. In the beginning of 1875 he transferred the possession to his son, Moses N. Barb.

MOSES N. BARB (p. 434) testified that on his father's departure he took immediate possession of the said tract under his father, who had claimed under Rich, and remained there until 1878, when he moved over on to the Gauley to another place on the Banks survey and within the lines of the land claimed by the plaintiffs and appellees (see map, p. 458.) On October 6, 1881, he signed a

written lease with Stuart Wood, one of the appellants, acknowledging his present and previous tenancy of all the lands occupied by him and particularly of the Banks or Highland tract and the Welsh tract. (Page 443, Printed Record.)

JESSE HAMMONS (p. 437) was examined September 11, 1886, and testified that he was then, and had been for twelve or thirteen years, *i. e.*, since 1873 or 1874, living on the McClary tract of 100,000 acres, always claiming possession of the whole of it under Rich, first by oral authority, and afterwards by written lease, dated February 2, 1881. (P. 440.)

This witness had squatted on the land some twenty-three years before, and held by what he calls a "hunter's possession" until he agreed to hold under Rich. He lived at different places on the tract, but never had moved off from it. He was on the lands in controversy all the time.

This witness testified that he put his brother, Mark Hammons, in possession of the improvement which he himself had been holding under Rich and that Stiltner took possession from said Mark. That neither of the latter had been in possession of any other tract nor for any other time than as stated by witness.

It will be remembered that plaintiffs and appellees attempted to show that Mark Hammons and Sliltner had held under them. The testimony of Jesse Hammons disposes of this contention.

This witness also confirmed the testimony of Adonijah H. Cogar.

ADONIJAH H. COGAR, one of the defendants and appellants (p. 444), testified that in 1877 he went into possession of part of the McClary tract under Jesse Hammons, then claiming under Rich, and there remained until March, 1886, with the exception of ten months, when he went to a place ten miles distant, but still on the lands in controversy and within the bounds of Jesse Hammons'

lease where he was living at the time of giving his testimony, September 11, 1886. This witness had built two cabins for residence on the land which he first occupied and cleared, and improved several acres. When he left in March, 1886, to occupy his present quarters, he had surrendered possession to Jesse Hammons, who put some of his boys in possession, who were still there.

CHRISTOPHER BAUGHMAN (p. 446) testified that in 1877 he went on the lands in controversy and went to work under Rich, clearing, building, fencing and farming and had been living there ever since. He had a lease of the whole of the Banks survey and was on that tract.

ANDREW MCELWAIN, a witness offered for plaintiffs and appellees (p. 415), on cross-examination said, in 1879 or 1880, he had bought 300 acres and taken a lease for the residue of the Banks survey from Rich by written contracts, and that although he had never lived on the land he had cut timber and sawed logs on it.

The admissions on cross-examination of R. C. CLEVINGER, a witness offered for plaintiffs and appellees (p. 419 and 424), have already been noticed, (*supra.*)

GEORGE MCFARLAND (p. 446.)

By the testimony of this witness, confirmed by that of James Woodzell (p. 426), it appears that William Mullins, himself a tenant in possession, put other sub-tenants in possession of various tracts, and that McFarland had been for a time a lessee of one of these sub-tenants, paying ten dollars a year rent for his place.

JAMES WOODZELL, a witness offered for plaintiffs and appellees, testified, on cross-examination (p. 426), that witness as agent for defendant and appellant, Rich, on May 10, 1872, gave to William Mullins a written lease of all the lands in controversy, with a contract to sell him 200 acres therefrom, and said Mullins, who had previously squatted on the land sold to Rich his squatter's right and

agreed to hold possession thereof and of the whole tract for Rich. Witness testified that Mullins was still on the land in 1882, one year after suit brought, in which statement he was confirmed by George McFarland (p. 446.)

The following is an abstract of Woodzell's testimony on cross-examination (given September 13, 1886):

I was agent for Rich for his land in Webster County from 1870 to 1871. Up to the time I gave my testimony in chief. As such agent I made a written lease or contract with Wm. Mullins in reference to the same in June, 1871, by direction of Mr. Rich. The contract was in substance that Mullins, who was living on Mr. Rich's land, would continue on it and have a general oversight over it, cultivate as much of it as he might see fit, range his cattle on it and deliver to Mr. Rich the possession Mullins had had of the land, and Rich was to give Mullins 200 acres of land at any place he might designate within the line of Mr. Rich's land. I filed a copy of my said contract with my deposition. (See p. 429.)

Mullins occupied the land for several years; I can't tell how long his son had it in his possession when I was with a surveying party running a line between Webster and Nicholas Counties--four years ago this fall (1882.) As far as I know he still occupies it. (1886). I know that he has continued to occupy it up to four years ago. The contract referred to the McCleary tract of 100,000 acres; the Welch 105,000 acres; Banks tract, 58,500. The situation of land which he occupied at the time of the agreement by the Mullins, the possession of which was surrendered by Mullins to Rich, was on Williams River, at what is generally called the Three Forks; and within the McClary tract. I do not know how much land Mullin had been occupying; he had a considerable improvement and ranged a good many cattle, but I do not know how much land he claimed. I think he had about twenty-five or thirty acres cleared off different parcels above and below the forks referred to. I

put Jesse Hammons. Peter Hammons and Peter B. Barb in possession of the Rich lands in 1871. It might possibly have been in 1872, but I think it was in 1871. I afterwards put N. S. Smith in possession, and I believe, though I am not positive, that I put Arthur C. Hamrick in possession. I put Wilbur Baldwin into possession. These were all to take and hold possession of the three tracts that I have mentioned, except that they were not to interfere with each other, or any person who might be in pos session under authority of Benjamin Rich or myself. I gave Smith a contract about six years ago. He went on to it about the time I gave him a contract and built a house. I think it was on the McClary tract, near the line of the McClary and Banks tract, but I think on McClary's side of the line. I have never seen that line run through I think I put Wilber Baldwin into possession between six and seven years ago. He was then living on the land on Cranberry River, on the McClary tract. I put Jesse Hammons into possession of all three of these tracts, particularly where he then lived, and where he now lives above the forks. I put Peter Hammons into possession of all three of these tracts, but I don't know exactly where he settled; somewhere near the three forks of Williams River. Peter Barb was on the land and continued on the land under me on Leatherwood Creek on the Banks and Welch survey. Jesse Hammons is still on his land; and Peter Barb stayed on this possession until about 1875, and he left his son, Moses N. Barb, on it. He remained two or three years and moved across the mountains on Gauley, where he still lives. This last improvement is also on the Banks tract and I think on the Welch tract; They have lived on and cultivated the land at each of the places named. I don't know how long Baldwin remained on on his, but he is now now off it. I don't know whether Smith ever lived on his or not. Peter Hammons is still on and cultivating his claim; he still claims authority over these three tracts of land. I had no written contract with

Peter Barb, but I had a written contract with Smith. I did not retain a copy. I had no contract with Wilber Baldwin, Jesse Hammons and Peter Hammons, but I gave Jesse Hammons a written contract some time afterwards, under which he was to get land at another place; a copy of which contract was filed with his deposition in this case. H. N. Smith now lives at Upper Glade, outside of three tracts claimed by the defendant.

Testimony on Behalf of Appellants, Defendants Below, on Their Payment of Taxes.

Patrick T. Duffy (Record, p. 448, etc.), said:

Am Auditor of West Virginia. The records in my office show that all taxes have been paid from 1870 to 1885 both inclusive on a tract of 100,000 acres in Webster county, assessed first in the name of Viscount Clifford De Fleury, and afterwards in the name of Benjamin Rich and others, and no taxes are due and unpaid against said tract.

The said tract was sold for taxes in 1870 in the name of De Fleury, and purchased by Rich. It became delinquent for various years, and was redeemed to date in 1879. The taxes for 1880 were duly paid, and the tract again became delinquent for 1881–82, and were redeemed before sale. Delinquent again for 1883, sold and purchased by Walter Wood, one of the appellants.

Also that all taxes have been paid from 1872 to 1885 both inclusive on 58,500 acres on Elk and Gauley Rivers, in Webster county, assessed in the name of Benjamin Rich and others and that no taxes are due and unpaid on said tract. The tract was returned delinquent for various years, but was finally redeemed November 26, 1880. Was sold for taxes of 1880 and 1884, and purchased by Walter Wood, appellant.

Assignment and Specifications of Error.

The appellants assign the following errors in the record of the decrees complained of:

1. The learned Court below erred in holding that the plaintiffs had title to the land claimed at the time they filed this Bill.

2. The learned Court below erred in not holding that the plaintiffs had no title to the land claimed at the time they filed the Bill.

3. The learned Court below erred in not holding that the title claimed by the plaintiffs had been forfeited absolutely to the State of West Virginia, because it had been sold for non-payment of taxes and purchased by the State, and was not redeemed at the time the Bill was filed.

4. The learned Court below erred in not holding that the said title claimed by the plaintiffs had passed to the defendants under Section 3, Article 13, of the Constitution of West Virginia, before this suit was instituted.

5. The learned Court below erred in not holding that the defendants were and are the owners of said land.

6. The learned Court below erred in not holding that the plaintiffs had no possession of the lands at the time the Bill was filed.

7. The learned Court below erred in not holding that the defendants had actual and continuous possession of the lands in controversy since 1869, and at the time of suit brought.

8. The learned Court below erred in not holding that defendants' deeds were no clouds upon the title of plaintiffs.

9. The learned Court below erred in not holding that Court had no jurisdiction, and in not dismissing plaintiffs' Bill for want of jurisdiction.

10. The learned Court below erred in not holding that the plaintiffs, by their Bill and proofs showed no title; no ground for equitable jurisdiction, because by their Bill they averred that the defendants had taken possession of the land or a part of it and had sold some of the land, and leased other portions and still had possession, and that the defendants' deeds were null and void on their face.

11. The learned Court below erred in not holding that the common law action of ejectment is the only remedy to determine the question of title between the parties.

12. The learned Court erred in holding that defendants' title had been obtained by fraud.

13. The learned Court erred in holding that the circumstances and conveyance which are the basis of defendants' title are marked by any fraud upon the plaintiffs.

14. The learned Court erred in admiting the testimony of John B. Shreve, Andrew McElvaine, Granville P. Shreve, Patrick F. Duffy, Morton Marye, Robert Stiles, Joseph A. Wingfield, Martin E. Shreve, Albert Owens and James Gilliland.

15. The learned Court erred in decreeing that each and all of the following deeds be set aside as inoperative, fraudulent, null and void, and as clouds on the plaintiffs' title, namely :

1. Deed from James Woodzell, Recorder of Webster County, to Benjamin Rich and Thornton Conrow, dated September 28, 1870.

2. Deed from James Woodzell, Recorder as aforesaid, and Benjamin Rich, in part assignee of Albert Owens and G. P. Shreve, dated September 28, 1870.

3. Deed from James Woodzell, Recorder as aforesaid, to Benjamin Rich and Thornton Conrow, assignees of Albert Owens and G. P. Shreve, dated September 28, 1870.

4. Deed from James Woodzell, Recorder as aforesaid, to Benjamin Rich and Thornton Conrow, assignees of Albert Owens, dated September 28, 1870.

5. Deed from James Woodzell, Recorder as aforesaid, to Benjamin Rich and Thornton Conrow, dated October 3, 1872.

6. Deed from George W. Sawyer, Clerk of Webster County Court, to Benjamin Rich, Thornton Conrow and Walter Wood, dated October 30, 1876.

7. Deed from Benjamin Rich and wife and Thornton Conrow and wife, to Ferdinand F. Sharp, dated 3d of May, 1872.

8. Deed from Ferdinand F. Sharp and wife to Walter Wood, Trustee, dated May 15, 1872.

9. Deed from Thornton Conrow to Walter Wood, dated March 1, 1879.

10. Deed from James Woodzell and Joseph A. Thompson, special commissioners, to Walter Wood, dated November 17, 1879.

11. Deed from Benjamin Rich and wife to Abram Waltman, dated December 13, 1875.

12. Deed from Benjamin Rich and wife to D. S. Robinson, dated October 30 1879.

Argument.

The appellants contend:

That the bills and proofs disclose no ground for the intervention of a court of equity.

First.—Because the appellees charge and prove that appellants are in possession, and pray that appellees may themselves be put in possession of the lands in controversy.

Second.—Because, under the statutes of West Virginia, whether appellees were in possession or not, their remedy at law was adequate and complete, and therefore exclusive.

Third.—Because they charge that appellants' title is void upon its face. If so, it presents no ground for complaint.

Fourth.—Because instead of an undisputed title in themselves, they have shown a good and perfect title in appellants, and whether this be conceded or not, this record presents that case of conflict and doubt between adverse claims of title which a Court of equity will never undertake to resolve.

Fifth.—Because appellees have neither charged nor proved any fraud or conspiracy, and, though the conduct so stigmatized were true, as alleged, it would present no ground for the intervention of equity.

First.

As to the Effect of the Appellants' Possession.

Complainants in their original bill (on page 9 of Printed Record) aver that defendants were in possession of a portion of the lands in dispute, to wit, 300 acres occupied by defendant, Andrew Wayne, and "a certain other part of said lands at the forks of Williams River," the extent whereof is not stated.

The same charge is repeated in the first amended and supplemental bill. (Pages 72 and 73.)

In their final bill (on 172 and 173) the charge is altered to an averment that defendants "claim to be in possession" of portions of the said lands, "but of what portion, if such be the fact, these plaintiffs do not know."

Complainants, however, in all their said bills have "ever prayed" to be put in possession of all their lands.

It would appear from the foregoing that, as this case progressed, complainants became more and more uncertain as to which party was in possession of the lands in controversy. They do not consider themselves in possession or they would not pray to be put in possession.

The reluctance manifested in their final bill to charge categorically that defendants are in possession is easily understood. If they had so charged they would, it is true, have stated a cause of action against defendants, if we assume that they had sufficiently averred title in themselves.

But such a cause of action would not be cognizable in equity.

To avoid this difficulty they based their prayer for a writ of *habere facias possessionem* substantially on their alleged ignorance of the facts as to possession.

If they are in possession, they do not need the writ; if the defendants be in possession, complainants' only remedy is ejectment.

In a bill to remove a cloud upon title, in the absence of any statutory provision, it is absolutely essential that complainant allege and show possession in himself.

There was no statute to the contrary in West Virginia at the time this suit was brought.

It is plain that these bills, both original and supplemental, do not proceed upon the ground that complainant are in possession of the lands in controversy. They do not charge possession in complainants nor deny possession in defendants, but in their final form, it is admitted that defendants claim to be in possession, and it is averred that complainants are ignorant of the facts in relation to this possession, and the extent thereof.

On this last point, complainants have doubtless been enlightened by the testimony.

It was said in *Holland* vs. *Challen*, 110 U. S., 15, and repeated and applied in *Whitehead* vs. *Shattuck*, 138 U. S, 146, "to maintain a suit of this character (*i. e.*, a Bill

quia timet, or to remove a cloud upon the title of real estate) it was generally necessary:

(1) That the plaintiff should be in possession of the property.

(2) and (*a*) except where the defendants were numerou , that his title should have been established by law.

(*b*) or be founded on undisputed evidence,

(*c*) or long continued possession.

The plaintiff in such a Bill, therefore, must have two qualifications, both possession and a title free from doubt.

As to the first qualification, it appears from the pleadings and the testimony in the case at bar, that the plaintiffs are not, and never have been, in possession of the lands in controversy.

(See Analysis of Testimony as to possession, *supra*, p. 23.)

None of the appellees live on the lands in controversy, and they did not prove that a single person was living on the land as tenant under them at the time of suit brought; nor did they clearly show that anybody had actually entered under them previously.

They produced one witness, Samuel Hinkle, who said he was living on the Caperton land, outside of the boundaries of the land claimed by appellants, and they proved the execution of two leases, covering a considerable portion of the lands in controversy, made two days before suit brought; but produced no testimony to show that the lessees ever went into actual possession under these leases, or at all.

They proved a lease to Mark Hammons of an undefined tract, possibly part of the lands in controversy, and possibly not, and proved also that he and his assignees had abandoned their improvements many years before suit brought.

They proved that they had appointed agents to look after their land, and one of these agents, James S. Craig, testified, in 1886, that he had settled a colony upon part of it; but did not say when he had done so, nor who the colonists were, nor what the extent of their holding was.

For anything that this appellees' main witness has said to the contrary, everything which he says he did may have been done since suit brought, except the execution of the two leases above referred to.

On the other hand, the testimony clearly shows, the witnesses offered for both sides concurring, that appellants have been in possession since 1871 and 1872, and that some of their tenants (Mullins, Hammons and Barb) were given leases over the entire boundaries claimed by appellants.

Under the law and statutes of West Virginia, the possession shown by appellants is as full and complete as if they had actually erected a fence around their entire boundary; and appellees could not dispute it unless they proved an actual adverse possession of a part of the lands in controversy, and embraced within the lines of appellants' deeds.

This appellees have not attempted to do.

The code of West Va., Chapter 90, Section 19 (by Act of March 8, 1879, Chapter 61, p. 91), is as follows:

"In a controversy affecting land, when a person claiming under a patent, deed, or other writing, shall enter upon and take possession of any part of the land in controversy, under such patent, deed, or other writing, for which some other person has the better title, such adversary possession, under such patent, deed, or other writing, shall be taken and held to extend to the boundaries embraced or included by such patent, deed or other writing, unless the person having the better title shall have actual adverse possession of some part of the land embraced by such patent, deed, or other writing."

The exception above mentioned, "except where the defendants were numerous," will not relieve the plaintiffs in this case from establishing their title at law, because of the original defendants, nine were claiming ownership as tenants in common, and the other four were tenants under them living on the premises in controversy, and all thirteen might therefore have been joined in a single action at law.

The Code of West Virginia, Section 17 and 18, provides as follows:

(Section 17). "If the action be against several defendants and it appear on the trial that any of them occupied distinct parcels in severalty or jointly, the plaintiff may recover several judgments against them for the parcel so held by one or more of the defendants separately from others."

(Section 18). "The plaintiff may recover any specific or any undivided part or share of the premises though it be less than he claimed in the declaration."

When equity takes jurisdiction of any matter to avoid a multiplicity of suits, or, as the language of the Courts sometimes is, when the defendants are numerous, reference is never made to the mere number of defendants, but always to the plaintiff's inability to join them all in a single action at law.

It is the multiplicity of suits not the number of defendants which is the basis of the equitable jurisdiction in a proper case.

And when it appears, as it does in this case, that a plaintiff in equity might have joined all the respondents as defendants in an action at law this ground of equitable interposition fails.

Second.

As to Appellees Remedy at Law whether in Possession or not.

But assume, for the sake of argument, that the pleadings and proofs were otherwise and that the plaintiffs were in possession at the time of suit brought; and it is submitted that under the facts disclosed and the law and statutes of West Virginia applicable thereunto, equity would still have no jurisdition.

The Code of West Virginia, Chapter 90, of the Action of Ejectment, Section 5 (Act of February 28, 1877), Chapter 110, page 160, is as follows:

"If the premises be occupied, the occupant shall be named defendant in the declaration, and whether they be occupied or not, any person exercising acts of ownership thereon or claiming title thereto, or any interest therein at the commencement of action, may also be named as defendant in the declaration."

In the country from which we derive our remedies, legal and equitable, there was no vacant land.

Dominion transmitted for generations was more prominent than alienation.

Land was held for enjoyment rather than as an asset.

In all controversies over land, therefore, one party was sure to be in possession, and the real bone of contention was the present enjoyment of the land.

The early remedy was naturally adjusted to the contention, and the action of ejectment contemplated a struggle for the possession and took on a corresponding form.

If the possession were understood, the law recognized no cause of action, because, under existing social conditions, the party in undisturbed possession suffered no embarrassment from an outstanding claim.

The plaintiff's cause of action in ejectment was twofold—that he was rightfully entitled to the possession of the land and that the defendant prevented him from enjoying it.

It is true that in cases of intrusion upon a prior peaceful possession, Courts of law restored the possession through an action of ejectment irrespective of the title, but, in all other cases, title and possession were inseparably associated, and they would award the possession only upon a determination of title.

Title, therefore, except in the case of an intrusion, was the only matter in dispute in ejectment.

Plaintiff being out of possession was compelled to rely upon his title to recover; defendant denies the title of plaintiff in order to maintain his position.

But when, in the course of time, land took on more of the character of a merchantable asset, it was perceived that a land owner in possession might be greatly prejudiced by an adverse and specious claim of title.

With courts of law, however, the association of ideas proved so strong that they could not conceive of an action of ejectment to try title to land where the struggle for the the possession was not the moving circumstance.

They consequently refused to adapt the action to the growing needs of society and allowed a defendant to defeat it, while asserting title, whenever it did not appear that he had interfered with the plaintiff's possession.

The legal remedy was, therefore, plainly inadequate, and equity supplied the want by entertaining a Bill, *quia timet*, to remove the cloud upon the complainant's title.

The equitable remedy was limited to the case where the complainant was in possession, because that was the circumstance which deprived him of any remedy at law.

It has always been recognized, however, that a court of law was the proper forum in which to try the question of a disputed title to land, and, although a Bill to remove a cloud upon title, involves a decision upon title, the exercise of this branch of equitable jurisdiction is strictly limited to the single case in which the plaintiff's possession prevented a submission of the question to a court at law.

There is a third case, namely: That in which neither plaintiff nor defendant is in possession of the land in controversy, and yet defendant's specious but unfounded claim, produces the same effect as before.

This new complication naturally arose in new countries like the United States, where unimproved and vacant land has always been an important commercial asset.

The common law action of ejectment was of course inadequate to meet this new difficulty. The equitable remedy was also inapplicable, because we took the remedy crystallized in the form above stated.

It has remained with us, as in England, limited to the single case, which called it into existence.

Recourse was, therefore, had to legislation, and the action of ejectment has been generally extended to cover disputes over the title to vacant land.

Such a statute, quoted above, existed in the State of West Virginia before the institution of the case at bar.

By that statute the Legislature of West Virginia went still further, and, recognizing the fact that the action of ejectment is the only proper method for trying title to land, has made it adequate to try every possible issue as to title, and applicable to all possible circumstances of possession, thereby making a resort to equity in that State unnecessary, and therefore impossible.

Resort to equity is impossible, because the action of ejectment, with the incident trial by jury, not only historically, but, under the Constitution of the United States and the State of West Virginia, is the only proper method for the trial of title.

Title is always a matter of legal rather than of equitable right.

Title is necessarily tried in the equitable proceeding to remove a cloud from title, but equity has no justification for assuming jurisdiction of such an issue, except where, for some reason, the action for ejectment is unavailable under the circumstances of the case.

The instant the statute makes the action of ejectment available, the ground for equitable interposition fails. The constitutional right of trial by jury, which attaches to the issue, revives in all its force.

The present proceeding, like every bill to remove a cloud upon title, involves an issue of title.

The appellees aver merely a good title in themselves, and an invalid title set up by appellants, and ask a decision of the question. They cannot bring such an issue into equity on any pretence, unless it appears that under the law of West Virginia the circumstances of possession prevent their recourse to an action of ejectment.

The record at bar presents no such case.

Enlarging still further on this point, the Constitution of the United States, in its Seventh Amendment, declares that

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

Section 16 of the Judiciary Act of 1789 (carried into the Revised Statutes, in section 723) provides

"That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law."

Article I, Section 13, of the Constitution of West Virginia, likewise provides:

"In suits at common law, where the value in controversy exceeds twenty dollars, exclusive of interests and costs, the right of trial by jury, if required by either party, shall be preserved."

It appears from the foregoing that the Constitution and laws of the United States, and of West Virginia, are identical as to the question under discussion.

Said Mr. Justice FIELD, in *Scott* vs. *Neely*, 140 U. S., with reference to said Section 16 of the Judiciary Act, "It is declaratory of the rule obtaining and controlling in equity proceedings from the earliest period in England,

and always in this country. And so it has often been adjudged that whenever, respecting any right violated, a court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such court, not only because the defendant had a constitutional right to a trial by jury, but because of the prohibition of the Act of Congress to pursue his remedy in such cases in a court of equity. (Citing authorities.) All actions which seek to recover specific property, real or personal, with or without damages for its retention, * * * are legal actions, and can be brought in the federal courts only on their law sides."

Cases will doubtless be cited, like that of *Holland* vs. *Challen*, *supra*, where state and federal courts have entertained bills in equity, under enlarging statutes making possession in plaintiff unnecessary.

There is no such statute in West Virginia that has any possible reference to equitable procedure, and, even if there were, the federal courts would refuse it operation, beyond the case where, but for its presence, there would be no remedy at all.

This is plain from the opinion in *Holland* vs. *Challen* itself, and in the discussion of that case in

Whitehead vs. *Shattuck*, 138 U. S., 146, and in *Scott* vs. *Neely*, *supra*.

In *Holland* vs. *Challen*, *supra*, the Statute (of Nebraska) provided:

"That an action may be brought and prosecuted to final decree, judgment or order by any person or persons, whether in actual possession or not, claiming title to real estate against any person or persons who claim an adverse estate or interest therein, for the purpose of determining such estate or interest, and quieting the title to such real estate."

The land in controversy was vacant and the Court sustained the bill solely on the ground that there was no remedy at law.

Though permission to prosecute an "action" to final "judgment" in the case put might be deemed to imply a choice of remedies, upon the assumption last above stated, the decision is in perfect line and beyond criticism.

The true owner of vacant land in the absence of any remedy at law was in the same need of equitable relief as if he were in actual possession.

In *Whitehead* vs. *Shattuck*, *supra*, the Bill charged that the defendants were in possession, and this Court, citing said Amendment and Judiciary Act, sustained the decree of dismissal by the Court below, on the ground that the unquestionable remedy at law precluded this Court from giving effect to any legislation enlarging the equitable remedy. In this case the legislative provision (Code of Iowa) is quoted as follows:

"An action to determine and quiet the title to real property may be brought by any one having or claiming an interest therein, whether in or out of possession of the same, against any person claiming title thereto, though not in possession."

The Court adding, "implying that the action may be brought against one in possession of the property. And such has been the construction of the provision by the Courts of that State." *Lewis* vs. *Soule*, 52 Iowa, 11.

But what action does the language of the Act contemplate?

Certainly the State of Iowa has not attempted to deprive a defendant in possession, of his ancient and well-established right of trial by jury, without his consent; and when she or any other State shall so proceed, such defendants' right of appeal to this Court under the Constitution and Act of Congress above cited (as "the Supreme law of the land") would seem to be undoubted, at least, since the passage of the Fourteenth Amendment.

What the Iowa Court said in *Lewis* vs. *Soule*, *supra*, p. 14, was this:

"It is not fatal to the action because it is denominated an action in equity. If the plaintiff shows in his

petition that his cause of action is at law, it was the defendants' right to have the action tried as an action at law, and if they omitted to avail themselves of that right, it is too late to complain now."

In the light of the evolution of the matter above referred to the explanation and interpretation of Acts becomes clear.

They are not framed with a view to, nor perhaps with much consideration for, the distinction between the legal and equitable procedure.

They aim merely to furnish a remedy where before there was none.

The case most prominently in mind was doubtless that of vacant land; but there is clearly no intention to so limit their operation, the language in the Nebraska Act being "whether in actual possession or not," and in the Iowa Act, "whether in or out of possession."

The possession referred to is that of plaintiff and this seems to explain why these Acts have been thought to apply solely to the equitable, rather than the legal procedure.

It is but the force of the association of ideas before referred to. But the language of the Nebraska Act, "an action may be brought and prosecuted to final decree judgment," would, however, clearly indicate a choice of remedies, legal or equitable; while the language of the Iowa Act, in itself considered, does not seem to contemplate the equitable procedure at all, but plainly the extension of the legal remedy in the cases put.

That this Act has no *exclusive* equitable application appears from the very decision quoted as authority for its application to the equitable procedure (*vid.* quotation, *Lewis* vs. *Soule*, *supra*).

The modern disregard of legal forms and prevalent lack of precision may cloud to some extent the precise scope intended for such acts; but where the language is at least as equally applicable to the extension of the legal

as of the equitable remedy, there can be, in view of the Constitution, Acts and decisions of this Court above referred to, but one legitimate interpretation of such acts.

No choice of remedies is possible in such cases; the legal must always exclude the equitable and the latter becomes inoperative.

But the Act of West Virginia, above quoted, does not specify the possession of either plaintiff or defendant.

Under chapter 90, of the action of ejectment, we find:

"If the premises be occupied, the occupant shall be named defendant in the declaration, and whether they be occupied or not, any person claiming acts of ownership thereon, or claiming title thereto, or any interest therein at the commencement of the action may also be named as defendant in the declaration."

In Further Elaboration of the Question of Jurisdiction.

This question of jurisdiction was presented in the introduction of each answer, and is especially made in the answer of the appellants, the heirs of Thornton Conrow (Sec. 11, p. 302, of Record). This objection will be taken notice of at any time and be made effectual.

Lewis vs. *Cocks*, 23 Wall., 466.

Killian vs. *Ebbinghaus*, 110 U. S., 574.

The case presented is that of the holders of a legal title in fee, having no privity, by contract or in estate with the appellants, showing no trust, claiming adversely to the title of the appellants, which is legal and not equitable. The appellees expressly allege their title to be *legal and not equitable*, and to be *superior* to that of the appellants, to the lands in controversy. No difficulty or embarrassment whatsoever, in producing and proving their claim of title by plain documentary evidence, is in any manner alleged

or indicated. Assuming all the appellees allege and show, what appears to authorize a Court of Equity under the law and practice in the Courts of the United States, or of the State in which the lands involved are situated?

First as to the Rule in this Court.

As before argued, the revised statutes of the United States provides that suits in equity shall not be sustained in either of the Courts of the United States in any case where a plain, adequate and complete remedy may be had at law. Section 723.

The effect of this provision is to deny to a Court of Equity cognizance of any case where a Court of Law is competent to proceed to a judgment which affords a plain, adequate and complete remedy, because in such case the defendant has a constitutional right to a trial by jury.

Hipp vs. *Babin*, 19 Howard, 271.
Insurance Co. vs. *Bailey*, 13 Wall, 616-621.
Grand Chute vs. *Winegar*, 15 Wall, 373, 375.
Lewis vs. *Cocks*, 23 Wall, 466, 470.
Root vs. *Railway Co.*, 105 U. S., 189-212.
Killian vs. *Ebbinghaus*, 110 U. S., 568, 572.

In the last case, Justice WOOD in the opinion says: "The fatal objection to the suit is that it is in fact an attempt by the party claiming the legal title to use a bill in equity in the nature of a bill of interpleader, as an action of ejectment."

This objection may be enforced by the Court *sua sponte*.

In *Hipp* vs. *Babin*, *supra*, this Court speaking by Justice CAMPBELL said: "The bill in this case is in substance and legal effect an ejectment bill. The title appears by the bill to be merely legal. The evidence to support it appears from documents accessible to either party, and no

particular circumstances are stated showing the necessity of the Court's interfering, either for preventing suits or other vexation or for preventing an injustice irremediable at law." One of the most recent cases in this Court on this point is *Smythe* vs. *N. O. Canal & Banking Co.*, 141 U. S., 656, 660, which in some of its features appears like the one at bar. The Bill in that case, according to the report, averred that complainant's title was valid and superior to that of the defendant to the lands in dispute. It set forth the various links in the chain of the complainant's title, and alleged that the proceedings by which the defendant acquired or pretended to derive its title, were the result of fraud and illegality. This Court, in the opinion delivered to Mr. Justice FIELD, which is quite brief, and is here quoted at large, said :

" Notwithstanding the statement of the bill respecting " the alleged illegal and fraudulent use of the ancient grants " produced, and the alleged illegal proceedings of the de- " partment, the bill avers the possession by the complain- " ant of a legal title to the premises. Whether that title " can be enforced against other claimants will depend, of " course, upon the validity of the ancient grants produced, " and of the proceedings by which Louisana is alleged to " have acquired the property. That can be shown in an " action at law as well as in a suit in equity.

" If the State acquired a good title by the swamp land " act of 1849, and the listing of the lands and patents to " her and she sold the premises, as alleged, to the com- " plainant, he can recover them in an action at law, and " the rents and profits accrued thereon since the defend- " ants have been in possession, and for that reason there is " no occasion for any proceeding in equity. The Sixteenth " Section of the Judiciary Act of 1789, which is carried " into the Revised Statutes as Section 725, declares that " suits in equity shall not be sustained in either of the " Courts of the United States in any case where a plain, " adequate and complete remedy may be had at law. The

"allegations as to the illegality of the action of the Land "Department, and the fraudulent proceedings of the de- "fendants in bringing forward the pretended ancient "grants, are entirely unnecessary to the maintenance of "the action. The facts upon which a title to the premises "in controversy rests, or by which such title can be de- "feated, can be readily shown in an action at law. No "discovery is necessary for the intervention of any equi- "table jurisdiction, nor would there be any avoiding of a "multiplicity of suits by maintaining this proceeding in a "Court of equity. In a single action at law all the facts "can be established, and all the questions necessary to "determine the right to the property can be considered "and disposed of. The allegation of fraudulent proceed- "ings respecting the acquisition of the title does not con- "vert an action at law into a suit in equity. The title "stated is merely legal, and as was said in the case of "*Hipp* vs. *Babin*, 19 Howard, 271, 277, where an eject- "ment suit in equity was sought to be sustained, the evi- "dence to support it appears from documents accessible "to either party; and no particular circumstances are "stated, showing the necessity of the Courts interfering, "either for preventing suits or other vexation, or for pre- "venting and injustice, irremediable at law." See also *Scott* vs. *Neely*, 140 U. S., 106, 110.

"The demurer to the bill was, therefore, properly sus- "tained and the suit dismissed on the ground that the "complainant had an adequate remedy at law, such dis- "missal being without prejudice to any subsequent action "at law which the complainant might be advised to bring."

This doctrine is repeated in *Davis* vs. *Ellis*, 109 U. S., 485. See also *N. Y. Guarantee Co.* vs. *Memphis Water Co.*, 107 U. S., 205, 214.

In construing the Judiciary Act, Sec. 723, referred to, this Court has said that by the phrase "inadequacy of the remedy at law," is meant that in its nature or character

the legal remedy is not fitted or adapted to the end in view. *Thompson* vs. *Allen County*, 115 U. S., 550. See also *Mc Conihay* vs. *Wright*, 121 U. S., 201, 206.

This Court also, in *Whitehead* vs. *Shattuck*, 138 U. S. 146, 156, in which a bill was filed by the plaintiff as trustee to quiet his title to certain real property in Iowa, alleging his ownership in fee and charging that the pretended title of the defendants had no foundation in law or equity, was made in fraud of the rights of the plaintiff, and that the evidence of the defendants' title was procured without legal title and in violation of law and was clouds upon plaintiff's title and interfered with and prevented the sale of his property. Held.—That the bill could not be maintained; that the action was for the recovery of real property and therefore was one at law; that the right which the plaintiff asserted was his legal title to certain real property, the remedy which he wished was to obtain possession and enjoyment of said property and that in a contest over the title both parties have a constitutional right to call for a jury.

In *Phelps* vs. *Harris*, 101 U. S., 374, which arose in Mississippi, this Court, in the course of its opinion, referred to the subject now discussed, upon the effect of a suit in equity under the statute of that State. Justice BRADLY, delivering the opinion, said: "The bill was filed under a statute of Mississippi, which declared as follows: "When any person, not the rightful owner of any real estate in this State shall have any other deed or other evidence of title thereto, or which may cause doubt or suspicion in the title to the real owner, such real owner may file a bill in Chancery Court of the county in which the real estate is situated, to have such a deed or other evidence of title cancelled, and such cloud, doubt or suspicion removed from said title, whether such real owner be in possession, or be threatened to be disturbed in his possession or not, etc."

Rev. Stat. Miss., 1871, Sec. 975, p. 191.

It is probable that the only effect of this statute was to enable owners of land not in possession to file a bill for the removal of clouds upon their title; since the ordinary jurisdiction of a court of chancery is sufficient to enable owners in possession to file such a bill. The questions, what constitutes such a cloud upon the title, and what character of title the complainant himself must have, in order to authorize a court of equity to assume jurisdiction of the case, are to be decided upon principles which have long been established in those Courts. Prominent amongst these are, first, that the title or right of the complainant must be clear; and, secondly, that the pretended title or right which is alleged to be a cloud upon it, must not only be clearly invalid or inequitable, but must be such as may, either at present or at a future time, embarrass the real owner in controverting it. For it is held that, where the complainant himself has no title, or a doubtful title, he cannot have this relief. "Those only," said Mr. Justice GRIER, "who have a clear legal and equitable title to land, connected with possession, have any right to claim the interference of a court of equity to give them peace or dissipate a cloud on the title." *Orton* vs. *Smith*, 18 How., 263; and see *Ward* vs. *Chamberlain*, 2 Black, 430, 444; *West* vs. *Schnebly*, 54 Ill., 523; *Huntington* vs. *Allen*, 44 Miss., 654; *Stark* vs. *Starrs*, 6 Wall, 402. And as to the defendant's title, if its validity is merely doubtful, it is more than a cloud, he is entitled to have it tried by an action at law; and if it is invalid on its face, so that it can never be successfully maintained, it does not amount to a cloud, but may always be repelled by an action at law.

Overing vs. *Foote*, 40 N. Y., 290; *Meloy* vs. *Dougherty*, 16 Wis., 269. Justice STORY says: "Where illegality of the agreement, deed, or other instrument, appears upon the face of it, so that its nullity can admit of no doubt, the same reason for the interference of courts of equity to direct it to be cancelled or delivered up, would not seem to apply; for, in such a case, there can be no danger that

the lapse of time may deprive the party of its full means of defence; nor can it, in a just sense, be said that such a paper can throw a cloud over his right or title, or diminish its security; nor is it capable of being used as a means of vexatious litigation or serious injury." 2 Eq. Jur., Sect. 700, a.

Here note the distinction between a doubtful and an invalid title. A doubtful title is more than a cloud. Also, that to give jurisdiction in equity the defendant's title must be not only invalid, but such invalidity must not appear on its face. If upon its face, it is invalid, then it does not amount to a cloud, "but may always be repelled in an action at law."

In *U. S.* vs. *Wilson*, 113 U. S., 36–39, the bill alleged the purchase by the Government of certain real estate, under regular proceedings, under internal revenue acts; that the defendant, Wilson, had conspired with others to defeat the title of the United States, and the title had, in pursuance of such conspiracy, been conveyed to Wilson. The prayer of the bill was to have the conveyance by Allen to Wilson declared fraudulent and void; and removed as a cloud upon the title of the plaintiff, and a writ of possession, etc. Justice MATHEWS delivered the opinion of the Court; in which he said: "The United States claim, and, if the allegations of the bill can be supported by proof, own the legal title to the lands described, a title paramount to that under which the appellee claims; for the deed to the United States conveys, if it is effective, the title which Allen had when the tax was assessed in July, 1867, and operates by relation from that time. Having the legal title, then, but being kept out of possession by defendants holding adversely, the remedy of the United States is at law to recover possession. Equity in such cases has no jurisdiction, unless its aid is required to remove obstacles which prevent a successful resort to an action of ejectment, or when, after repeated actions at law, the juris-

diction is invoked to prevent a multiplicity of suits, or there are other specific equitable grounds for relief. Bills *quia timit*, such as this is, to remove a cloud from a legal title, cannot be brought by one not in possession of the real estate in controversy, because the law gives a remedy by ejectment, which is plain, adequate and complete. This is the familiar doctrine of this Court. *Hipp* vs. *Babin*, 19 How., 271; *Ellis* vs. *Davis*, 109 U. S., 485; *Killian* vs. *Ebbinghaus*, 110 U. S., 568; *Fussell* vs. *Gregg*, 113 U. S. 550, 555."

The Court of Appeals of Virginia, years ago, in *Lange* vs. *Jones*, 5 Leigh, 192, affirmed the doctrine, which is the rule in West Virginia at the present time, that a court of equity has no jurisdiction to settle the title to lands where the plaintiff has no equity against the party who is claiming or holding the lands. This is affirmed in *Cress* vs. *Kemble*, 26, W. Va., 603, 606. *Hill* vs. *Proctor*, 10, W. Va., 59.

The same point is held in *Bright* vs. *Knight*, 35, W Va., 40, 52, (March 1891. In *Clayton* vs. *Barr*, 34, W. Va., 290. the familiar principle is again expressed that "where the estate or title between conflicting claimants to land is legal in its nature, and the legal remedy is adequate, equity will not entertain a suit to remove the cloud from the adverse claim, the plaintiff being out of possession, and the adverse claimant in possession.

In *Harvey* vs. *Tyler*, 2 Wall, 326, 348, this Court referring to the law of Virginia upon the action of ejectment (which was and has always been the same in West Virginia), says: "The code of Virginia, as well as that of several other States, allows the action of ejectment to be brought against persons claiming title, or interests in the property, although not in possession." It says: "The person actually occupying the premises shall be named defendant in the declaration. If they be not occupied, the action must be against some person exercising owner-

ship thereon, or claiming title thereto, or some interest therein, at the commencement of the suit." "If then there was a part of the tract claimed by some person, on which there was no occupant, the case existed which the second clause of the act provides for. The policy of this act is obvious. It is that persons out of possession, who set up false claims to land, may by a suit in ejectment, which is the legal and proper mode of trying title, have that claim brought to this test. The act provides that such a judgment is conclusive against all the parties; and thus the purpose of the law to quiet title by a verdict and judgment in such cases, is rendered effectual. The language of the code of New York is identical with that of Virginia on this subject. And the construction we have given to it was held to be the true one by the Supreme Court of the former State."

We summarize the propositions on the question of jurisdiction:

1. The Bills of Complaint cannot be sustained upon the doctrine of "Bills of Peace."

A Bill of Peace is brought by a person to establish and perpetuate a right which he claims, and which, from its nature, may be controverted by different persons at different times; or when separate attempts have already been unsuccessfully made in actions at law to overthrow the same rights, and justice requires that the party should be quieted in the right, if it is already sufficiently established.

2 Story, Equity, Sec. 853.

Holland vs. *Challen*, 110 U. S., 19, 20.

1 Pomeroy Eq., Sec. 246.

2. Nor can this decree stand upon the doctrine of a bill *quia timet*. A bill in the nature of a bill *quia timet* can only be maintained by one who has a clear, legal and equitable title to land connected with possession.

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Allen vs. *Hanks*, 136 ~~Howard, 59~~.

Wright vs. *Mattison*, 18 Howard, 56.

Orton vs. *Smith*, 18 *Id.*, 265.

Frost vs. *Spitley*, 121 U. S., 556.

1 Story Eq., Sec. 700 *a*.

In such case the bill cannot be maintained without clear proof of both possession and legal and equitable title in the plaintiffs.

Phelps vs. *Harris*, *supra*.

3. In the next place, the case made out in the bills of complaint cannot be sustained upon the theory that equity may set aside as irregular or invalid tax-titles. In order to give jurisdiction to set aside a tax-deed upon the ground that it was unauthorized, as fraudulent or otherwise invalid, the suit must be instituted by the former owner or his creditors or representatives. A mere stranger to the title sold at the tax-sale cannot interfere, however defective or without foundation the tax-deed may be.

Unless it shows that the plaintiffs have some legal or equitable interest in the title that was sold and conveyed for taxes, they cannot be heard to question the proceedings under which the title was so conveyed.

Jackson vs. *Kittle*, 34 W. Va., 210.

Simpson vs. *Edmiston*, 23 W. Va., 675.

4. Nor can the suit be maintained, if upon the face of the record, as the appellees claim, the deeds complained of are void. *Peirsoll* vs. *Elliott*, 6 Peters, 95. In *Hannewinkle* vs. *Georgetown*, 15 Wall, 547, this Court in 1872 decided that it had long been held, "that there exists no cloud upon the title which justifies the interference of court of equity, where the proceedings are void upon their face; that is, where the same record which must be introduced to establish the title claimed, will show that there is no title." At October Term, 1890, this Court, in the

opinion delivered by the Chief Justice, in *Mackall* vs. *Casilear*, 137 U. S., 564, referring to the deed there in question, declared: "If void upon its face, as now contended, the interference of a court of equity would seem to be unnecessary."

5. Neither of the bills of complaint in this record alleges actual possession in the plaintiffs. Constructive possession is not sufficient. Both clear legal, and equitable title—in other words, undoubted, absolute title—coupled with actual possession, must be averred and established to give a court of equity jurisdiction, acting in a district where the rule has not been modified by statute, in order to justify relief in such case. The averment is that by virtue of the death of A. T. Caperton the appellees became seized and possessed of the lands in controversy. Whereas the same bills allege actual possession taken under the title held by appellants claiming in hostility to the title claimed by the appellees. (Rec. p. 172–173.)

The averment of possession in the bill of the appellees is that of a conclusion; no facts and circumstances are set forth from which the Court can determine the fact for itself.

6. Again, the Bills of Complaint pray that the defendants may answer under oath. The answers filed fully respond to all the matters of the Bill, and the oath of the defendants must be taken as true, unless disproved by the testimony of two credible witnesses, or of one credible witness, or facts entirely equivalent thereto, and as corroborative, by another witness. Rule 39, Supreme Court.

Carpenter vs. *Insurance Co.*, 4 Howard, 185.
Hughes vs. *Blake*, 1 Mason, 515.
Langdon vs. *Goddard*, 2 Stone, 267.
Gould vs. *Gould*, 3 Stone, 546.
Towne vs. *Smith*, 1 W. & M., 115.
Hayward vs. *Bank*, 4 Clifford, 294.
Beals vs. *Illinois*, 133 U S., 290.

Third.

As to the Allegation that Appellant's Title is Void upon its Face.

Appellees have effectually charged themselves out of a Court of Equity by averring that all the proceedings and conveyances to which exception is taken in the bills, and which constitutes the defendants' title, are void upon their face.

After setting out with circumstantial fullness the alleged circumstances which constitute the alleged fraud, and the alleged defects, irregularities and errors in the proceedings and conveyances aforesaid, complainants charge in their final bill (at the bottom of page 166 of the printed record), that the proceeding aforesaid, "and the deed of conveyance of the several tracts to the purchasers thereof, and their assignment, were and are, each and all of them, fraudulent, null and void in law, whether said purchasers at said tax sales had notice of the said fraudulent objects and purposes, acts and doing of the said John B. Shreve or not, and whether (they) aided or abetted him intentionally or not, * * * * and they were bound especially to take notice of the fact that all the right, title, interest or claim which any or all of these persons in whose names the lands were so entered and charged with taxes on said land books, and for the non-payment of which they were being sold, was in the State of West Virginia."

And finally (at the bottom of page 169 of the printed record), they sum up the whole matter in the following charge:

"And these plaintiffs are advised and believe, and so aver and charge, that each and all of said deeds hereinbefore mentioned, are inoperative, null and void, as well for the reasons hereinbefore stated as for the manifest errors and defects appearing upon the face of said deeds, and upon the face of the records and proceedings in relation

thereto, in the office of the Recorder of Webster County, at and after the date of the said supposed deeds, and now in the office of the clerk of the County Court of Webster County."

This last charge is repeated by reference, on page 170 of said printed record, so far as concerns the proceeding and deeds subsequently mentioned in said Bill, and finally, on page 172, the Bill charges, "that the title of the plaintiffs to all the lands herein described and claimed by them is good and valid, both in law and equity, while the said pretended title of the said defendants, and each of them, herein stated and described, is invalid, fraudulent, null and void, for the reasons herein stated and set forth."

The reasons referred to are: first, the alleged fraud, and second, that the muniments of defendants' title are void upon their face.

The first ground, as has been shown, gives complainants no standing in a court of equity; the second, if sustained, would effectually bar them out.

No principle is better established than that a court of equity will not entertain a Bill to remove the supposed cloud of a claim of title void upon its face.

The reason is that a cloud which cast no shadow is not a cloud at all.

A hostile claim of title which occasions no doubt cannot interfere with the marketability of another's title, and there is no other test nor ground for complaint.

It is only when the claim of title constituting the alleged cloud would, if not annulled, affect the marketability of complainants' title that equity will interfere.

Embarrassment in affecting sales because of hostile and unfounded claims is not the test of marketability. Complainant's lamentations that they find it difficult to make sales under their alleged title is therefore irrelevant and incompatible with their allegations that defendants' title is null and void upon its face.

Fourth.

AS TO THE WEAKNESS OF APPELLEES' TITLE AND THE JURISDICTION OF EQUITY WHERE A COMPLAINANT'S TITLE IS DOUBTFUL.

Appellants contend that the pleadings and proofs show that the title to these lands is in them.

First. Because the tax sales of 1869 and 1871, and the deeds made in pursuance thereof to appellees, are regular on their face and equivalent to a grant from the State of West Virginia.

Second. Because whatever title appellees may have had they lost by forfeiture, October 5th, and 13th, 1876, and the same was under the Constitution and Statutes of West Virginia, transferred and vested in appellants by reason of their actual and continuous possession and payment of taxes.

Third. Appellants further contend that appellees have, it is true, shown a forfeiture of their title to the State of West Virginia, but they have not shown that they have lawfully redeemed the same, and that the alleged redemption proceedings set up by appellees are void on their face.

Fourth. That in the most favorable aspect for appellees, these circumstances make the title of appellees doubtful and require the dismissal of the bill.

As to Second.

FORFEITURE AND TRANSFER OF TITLE.

The lands of appellees in the lifetime of Allen T. Caperton became delinquent for taxes for the year 1874, and on October 5th, 1875, the lands in Webster County were sold for taxes and were purchased by the State; on October 13th, 1875, the lands in Nicholas County were sold for taxes and purchased by the State.

Allen T. Caperton died in July, 1876, having taken no steps to redeem his said lands. On October 5th, 1876, the Webster County lands, and on October 13th, 1876, the Nicholas County lands became absolutely forfeited to the State; neither Allen T. Caperton, nor his heirs, nor his legal representatives having made any effort to redeem the said lands within one year from the date of the respective sales, as required by law.

On October 29, 1879, the lands in Nicholas County were again sold for taxes, viz.: the taxes of 1877 and 1878, and were purchased by individuals who paid the taxes for those years to the Sheriff.

On the 10th of May, 1872, appellant, Rich, by his attorney in fact, J. Woodzell, gave to William Mullins a written lease for the entire boundary claimed by appellants, and put Mullins in possession thereof, and the said Mullins continued in possession and was still living on the land under Rich when suit was brought in 1881, certainly until 1880. (See Record, pp. 426–429.)

Mullins lived at the forks of Williams River on the very land in controversy. Jesse Hammons was in possession of the McClary tract, under Rich, from 1873 or 1874, and, with his brother, Peter Hammons, was still in possession in 1881, when suit was brought. He had never moved off. Peter B. Barb and his son and successor Moses N. Barb, were on the Banks and Welch tracts' claiming under Rich, from 1870 to 1881, and Moses N. Barb is still living on the land.

Adonijah H. Cogar went into possession on the McClary tract under Jesse Hammons in 1877, and has never removed therefrom. Christopher Baughman went into possession under a lease of the whole of the Banks tract in 1877, and has remained in possession ever since.

It is unnecessary to enumerate further.

Appellants have been in actual and continuous possession of all their lands from 1870 and 1872 to 1881, when suit was brought, and are still in possession.

In 1879 appellants paid the taxes for the year and all delinquent taxes against the McClary tract, so that they show at that time a payment of taxes on the said tract for ten years from 1870 to 1879 inclusive, coupled with actual and continuous possession of over seven years; they have had possession and paid all taxes to date, which in 1886 amounted to over $19,000. (See Printed Record, p. 237.)

On November 26, 1880, appellants paid all delinquent taxes against the Banks tract to and including the year 1879, thus showing a payment of taxes on the said tract for eight years from 1872 to 1879 inclusive, and an actual continuous possession thereof for nine years; they have paid all taxes and continued in actual and continued possession thereof to date.

October 25, 1880, appellees took the first steps toward paying the taxes which for six years they had neglected to pay. On that date they undertook to free their land in Nicholas county from the possible claim of the purchasers at the sale of 1879 by paying the taxes of 1877-1878, for which the land had been sold a second time.

But they took no steps to redeem from the earlier forfeiture under the sales of October 5 and 13, 1875, until April 6, 1881, when they filed a petition in the Circuit Court of Webster county to redeem their lands in that county on which no taxes had been paid since 1873, a period of eight years.

In this petition they informed the Court that there was no one in "condition to take the benefit of the forfeiture of the aforesaid lands or any parts thereof under the provisions of Section III, Art. 13, of the Constitution of the State," and the Court seems to have accepted this averment as sufficient proof and, disregarding the plain mandate of the statute, failed to appoint a commissioner to inquire into the truth thereof, but upon report of the amount of taxes due made a decree August 5, 1881, permitting the redemption on payment of taxes to and including the year 1880. At the time that decree was made appellants

had been in actual and continuous possession of the very lands for ten years, and had paid taxes thereon for eight years in addition to the taxes paid at the time of Rich's purchase. No notice of these proceedings was given to appellants.

On August 10, 1881, two days after bringing the present suit, they presented a similar petition to the Circuit Court of Nicholas county. James S. Craig, appellee's paid attorney in fact, was appointed August 11th the Commissioner of School Lands for Nicholas county and ordered to report to the Court whether there were any persons in condition to take the benefit of the forfeiture and the amount of the taxes due. With commendable promptitude the Commissioner completed his investigations and filed his report the same day, informing the Court that there was no person in a position to take the benefit of the forfeiture. On the same day the Court made a decree permitting the redemption on payment of taxes from 1874 to 1880, inclusive, excepting for 1877–1878 previously paid as aforesaid.

On that day, August 11, 1881, appellants had been in actual and continuous possession of these very lands for nine years and had paid taxes for ten years in addition to the sum paid by Rich on the occasion of his original purchase. No notice of these redemption proceedings was given to appellants, though the suit at bar had been commenced two days before and complainants had known of their claim for twelve years and of their possession also.

Fourth.

No Jurisdiction in Equity where Complainant's Title is Doubtful.

This record presents a case which is far from satisfying the requirements of this Court as to a complainant's title in bills *quia timet*.

Appellees' title has never been established at law; it is not founded on undisputed evidence, nor on long-continued possession. This Court has said that the primary obligation on the complainant in a bill *quia timet* to remove a cloud on title is always to establish his title at law. Appellees do not pretend to have done this. They cannot supply this want by asserting that their title rests on undisputed evidence, for such is not the case. They cannot pretend to have supplied the want of undisputed evidence of title by evidence of long-continued possession. Appellants contend that appellees have produced no evidence of possession at all, but it is certain that they have produced no evidence of a possession, which is equivalent to title.

The long-continued possession referred to is such a possession as in itself is equivalent to title; such a possession as would be sufficient to protect the plaintiff in any event in an action of ejectment brought against him under the title which he is seeking to annul.

It must be a hostile, exclusive possession, coextensive with complainant's claim and covering the very land in controversy. It would be a waste of time to undertake to review this evidence again, to demonstrate the impossibility of appellees pretending to any such possession.

Yet it is essential that appellees show a title which may be placed beyond dispute in one of these three ways; for a court of equity will never entertain a bill to remove a cloud from a title which is itself doubtful.

The complainants must be clear, leaving nothing for the Court to determine, but the alleged validity of the title, which it is asked to annul.

The Court will not undertake to try complainant's title as a preliminary to the adjudication upon the character of the title which is alleged to be a cloud. Equity in a proper case, and in the absence of a remedy at law, will remove a spacious cloud upon an undoubted title, but that limit of its jurisdiction. It will not undertake to settle conflicting titles generally.

The attitude of a court of equity toward a Bill *quia timet*, where the plaintiffs fails to show an unquestionable title, is precisely analagous to its attitude toward a Bill for specific performance, where the plaintiff's title is doubtful. In neither case will the Court undertake to resolve the doubt, because all doubts respecting a plaintiff's title must be resolved in an action at law.

A plaintiff in such a case can have no equity, though he be in possession, and there be no statute to help him out of that difficulty at law.

In order to determine this case as presented by the pleadings in favor of complainants, this Court must necessarily pass upon the question which of these two sets of contending claimants has the title to the land under the Constitution and statutes of West Virginia before it can take up the question, whether there is any fraud or conspiracy affecting the deeds which the Court is asked to annul.

The issue is not limited to the question whether the tax-deeds and subsequent conveyances constitute a cloud upon appellees' title.

Whatever may have been the effect of these deeds originally, appellants now have a claim of title which rests upon facts and circumstances occurring subsequently to the transactions, and deeds which are alleged in the Bill to be fraudulent and void.

If appellees could have any equity, it can only be in reference to the proceedings which resulted in the tax deeds; they do not pretend that it extends to anything else.

They suggest no ground of complaint other than an alleged fraud and conspiracy affecting these deeds, and it is only on this ground that they assume to assert that appellant's title is a nuility, and that they have an equity to have it declared void as a cloud upon their own. They are compelled, therefore, to show that the whole title of appellants, as far as appellees are concerned, rests upon these

tax deeds. If there be another element to which the charge of fraud and conspiracy does not apply and cannot apply, it is clear that they cannot ignore it, as they attempt to do.

There is such an element, and its presence turns this whole controversy into a contest over the validity of appellees' title. Long after the making of the tax deeds complained of, appellees failed to pay taxes on their lands, and allowed them to be forfeited to the State, and appellants, being in possession, and having paid taxes on their lands, the Constitution and statutes of West Virginia transferred to appellants whatever title appellees may have had.

This issue is raised by the pleadings and the contention of appellants thereunder is fully made out by proofs. How can it be possible, therefore, for this Court to say that the title of appellees is made out by undisputed evidence. It is not necessary for this Court to say which of the two parties to this record had the better title. The fact that such an issue is properly raised by the pleadings, and is shown to exist in verity by the proofs, and that the dispute of fact effects complainants' title, is sufficient to bring about the dismissal of this Bill. This is not a case of a spurious and specious title operating as a cloud upon a valid title sustained by undisputed evidence. The fact of forfeiture of appellees' title is admitted in this Bill. Whether they could effectually redeem or not depends, *inter alia*, on the question whether their title had passed or not to appellants. Whether it did so pass or not depends on the fact of appellants' possession and payment of taxes. Appellants offered evidence to show and contend that they fully proved such possession and payment of taxes as the Constitution and statutes require. If the truth of this contention be admitted, there is the end of appellees' case ; in every jurisdiction, if it can be denied, there is a conflict upon a question of fact affecting appellees' title, which effectually bars them out of a court of equity and calls for the verdict of a jury in an action at law.

The lands claimed by appellees were forfeited to the State in September, 1875, before appellees pretend to have acquired title, and have never been redeemed.

On the twenty-sixth day of September, 1875, nearly a year prior to the death of Allen T. Caperton, the lands claimed by the appellees in this suit having been returned delinquent for the non-payment of the taxes due thereon for the year 1874, etc., were sold by the proper officer and purchased by the State of West Virginia, the title thereto, by virtue of statutes, vesting at once in the State. The Constitution of West Virginia, which went in effect in August 22, 1872. Art. XIII, Secs. 4 and 5, is as follows:

"Sec. 4. All lands in this State, waste and unappropriated, or heretofore or hereafter for any cause forfeited, or treated as forfeited, or escheated to the State of Virginia, or this State, or purchased by either and become irredeemable, not redeemed, released, transferred or otherwise disposed of, the title whereto shall remain in this State till such sale as is hereinfter mentioned be made, shall by proceedings in the Circuit Court of the county in which the lands, or part thereof are situated, be sold to the highest bidder."

"Sec. 5. The former owner of any such land shall be entitled to receive the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which, if the land had not been forfeited, would have been charged or chargeable thereon, since the formation of this State, with interest at the rate of twelve per centum per annum, and the costs of the proceedings, if his claim be filed in the Circuit Court that decrees the the sale, within two years thereafter."

After one year from the day of sale, this title became irredeemable. No attempt to redeem was made in that period.

The statute of West Virginia on this subject intended to carry out these constitutional provisions, and which were in force in 1875, is found in Chapter 117, Secs. 31–38, Acts 1872–3, p. 326.

"Sec. 31. When any real estate is offered for sale, as aforesaid, and no person present bids the amount to be satisfied to the State from the sale, the Sheriff or Collector shall purchase the same on behalf of the State for the taxes thereon, and the interest and damages on the same, and shall make out a list thereof under the following caption:

"List of real estate within the county of , sold in the month (or months) of , eighteen hundred and , for the non-payment of taxes thereon for the year (or years) , and purchased for the State of West Virginia.

"Underneath shall be the several columns mentioned in the tenth section, with a like caption to each column, omitting, however, the column headed 'name of purchaser.' The officer making out the said list shall make oath that it contains a true account of all the real estate within his county purchased by him for the State during the year and return the list with a certificate of the oath attached, to the Clerk of the County Court within ten days after such sale, who shall, within twenty days after such return, make an accurate copy thereof in a well-bound book and transmit the original to the auditor. Upon receiving said list, the auditor shall credit the Sheriff or Collector with the amount for which the real estate therein specified was purchased, but not with any commission thereon."

"Sec. 32. The auditor shall cause all the lists received in his office under the preceeding section to be recorded in a well-bound book, and all such estate, right, title and interest in the real estate mentioned in such lists as would have vested in an individual purchaser thereof at such sale who had obtained proper deeds thereof and caused them to be admitted to record in the proper office, shall be by the sale and the purchase on behalf of the State vested in the State, without any deed or other conveyance thereof to the State; subject, however, to the right of redemption mentioned in the next section."

"Sec. 33. The previous owner of any real estate so sold and purchased for the State, his heirs or assigns, or any person having a right to charge it for a debt, may

within one year from the sale thereof, or if the same was heretofore sold, may within one year from the passage of this act, but not afterwards, redeem the same by paying into the treasury the amount of all State and State school taxes with interest and damages due thereon at the time of such purchase, including such taxes as were or should have been assessed for the year in which the same was sold, with such additional sums as would have accrued thereon for such taxes if the same had not been purchased by the State with interest thereon at the rate of twelve per cent. per annum, from the twentieth day of January in the year following that in which the same would have accrued; and by paying to the sheriff of the county in which the same was sold, all the county and township or district taxes due thereon at the time of such sale, including such taxes as were or should have been assessed for the year in which the same was sold, with such additional sums as would have accrued thereon for county and township or district taxes if the sa[illegible]had not been purchased by the State, with interest on the sum so due and unpaid and which would have so accrued in each year, at the rate of twelve per centum from the twentieth day of January, in the year following that in which the same would have accrued; and also by paying to the officer whose duty it is to receive and disburse the same, any independent school district taxes due thereon at the time of such purchase, including such taxes as were or should have been assessed for the year in which the same was sold, with such additional sums as would have accrued thereon for such taxes, if the same had not been purchased by the State with interest thereon for each year at the rate of twelve per centum per annum, from the time the same should have been paid in the manner hereinafter set forth."

Mode of Redemption.

"Sec. 34. Any person having a right to redeem any tract or lot of land purchased by the State at a sale thereof for the non-payment of the taxes thereon who may desire to redeem the same as provided in the next preceding section, may, by himself or his agent, apply to the clerk of the county court, or such other officer of the county in

which such land lies, as may have the custody of the lists of county, township or district and independent school district taxes, or the records thereof, for a statement showing the amount and character of such delinquent taxes, and the years for which the same were assessed; and upon such application the said clerk or other officer is hereby authorized and required to ascertain from said delinquent lists or records the amount of such delinquent taxes, and shall make a statement in duplicate showing the amount and character thereof in detail, and the years for which the same were assessed, and certify the same and deliver them to the person so applying. Upon this being returned to him, as hereinafter provided, said clerk or officer shall make an indorsement upon the original to the effect that a duplicate thereof has been filed in his office and deliver it to the party so returning it, and file the duplicate thereof in his office and charge the Sheriff or Collector with the amount therein stated to have been received by him. In case there are no records of the delinquent taxes aforesaid, and the clerk or other officer finds no county, township or district or school district taxes charged against the land, he shall give to the party applying a certificate showing this fact, which shall have the same effect for this purpose as the statements hereinbefore referred to."

"Sec. 35. The person securing said duplicate statements shall present them to the Sheriff or Collector of said county, who shall thereupon be authorized to receive the taxes therein stated to be due, and upon payment to him of the amount of said taxes with interest as required by law, it shall be his duty to endorse the fact of such receipt upon each of them over his official signature, and deliver them to the party so paying said taxes, to be returned by him to the said clerk or other officer for his endorsement as aforesaid: Provided, that if the records of the Auditor's office shall show to the satisfaction of the Auditor that the entire amount of taxes for county, township or district purposes, properly chargeable against any tract of land have been returned to his said office, then the said Auditor may issue a certificate of redemption to the owner or agent, upon payment of all of said county, township or district taxes, in addition to all State Tax, as hereinbefore required, into the State Treasury, and without requir-

ing the receipt of the Sheriff or Collector as hereinbefore stated."

Sec. 36. Upon the production to the Auditor of a copy of said statement, so receipted by the Sheriff or Collector, and indorsed by the clerk or other officer aforesaid, or of the certificate mentioned in the thirty-fourth section, and the further payment into the treasury of the amount of delinquent State and State school taxes, and interest as required by law, he shall issue a certificate of redemption for the tract or lot of land upon which the taxes have been so paid."

* * * * * *

Sec. 38. When real estate so purchased is so redeemed, the Auditor shall certify the fact of such redemption to the proper assessor, and it shall thereupon be the duty of such assessor to re-enter the same upon the land books of the county or district in the name of the former owner thereof, or in case the same has been conveyed by deed to any other person to enter the same in the name of the grantee in such deed. *But such redemption shall not prejudice any claimant* of such land, or any part thereof, *who may have acquired the State's right thereto by the Constitution or former laws of the State.*

When the "former owner" did not redeem his title within the one year, the same becoming absolute in the State, in order to dispose of it, by a proceeding in the Circuit Court of the county, in accordance with the terms of the West Virginia Constitution, Article XIII, Section 4, chapter 134, Acts 1872–1873, was enacted November 18, 1873:

"Be it enacted by the Legislature of West Virginia:

"1. That chapter 105 of the code of West Virginia be amended and re-enacted so as to read as follows:

"All waste and unappropriated lands within this State, and all lands in this State heretofore vested in the State of Virginia by forfeiture or purchase at the Sheriff's or Collector's sale for delinquent taxes and not released

and exonerated or redeemed within one year, according to law; all lands heretofore or hereafter purchased for this State, at a sale thereof for taxes, and not redeemed within one year, according to law; and all lands forfeited to this State for the failure to have the same entered upon the books of the assessor and charged with the taxes thereon, as provided for by law, shall, *so far as the title thereof shall not be vested in junior grantees or claimants under the provisions of the Constitution and laws*, be sold for the benefit of the school fund, in the manner hereinafter prescribed. The Auditor shall certify to the clerk of the county court a list of all such lands, which, or the greater of which, lie in his county, within sixty days after the title thereto shall vest in the State.

"2. It shall be the duty of the Circuit Courts from time to time to appoint for each county of their respective circuits a commissioner, to be styled the commissioner of school lands, whose duty it shall be to ascertain and report to said Courts the quantity of land in his county subject to sale, according to the provisions of the preceding section, designating particularly the number of tracts, their local situation, and the quantity and probable value of each, together with all the information which he may be enabled to procure in relation to the title to such lands; and where necessary he may employ a surveyor to survey the same."

"3. It shall be the duty of the surveyor of each county in this State, as soon as the same shall come to his knowledge, to report to the commissioner all waste and unappropriated lands in his county, except the lands under the bed of the Ohio River, subject to sale under the provisions of this chapter; designating particularly the quantity of each tract or parcel, and the local situation thereof, together with all the information he can procure in relation to the same, and of any claim of title thereto, and upon the petition to subject the same to sale, being filed, the Clerk of the Circuit Court shall summon the *parties claiming title thereto* to show cause why the same shall not be sold for the benefit of the school fund."

"4. Upon the return of said commissioner it shall be the duty of the Court, by order entered of record, to direct the said commissioner to make sale of said lands in the

same manner in all respect as in the case of other lands directed to be sold *under decrees of said Court:* Provided, That no one tract of land so sold shall contain over six hundred and forty acres, and that no such sale shall be made elsewhere than at the court house of the county in which the land directed to be sold is situated, on some court day for such county, nor unless public notice of the time and place of sale shall have been published in some newspaper nearest the place of sale, and also posted at the door of said court house, and at least four of the most public places in said county, for thirty days next preceding said sale. The said Courts are also authorized and required in all cases to direct such surveys and divisions of the lands as may be deemed necessary and expedient to promote advantageous sales thereof, the expenses of which shall be reported to the Court and paid out of the proceeds of such sales. But in no case shall the State be liable to any expense by reason of such survey, beyond the proceeds of said sales, and no survey of any such lands shall be executed unless the surveyor will consent to receive his compensation for his services in making such survey out of the proceeds of said lands.

"5. The commissioner shall require one-fourth of the purchase money to be paid in hand, and also bond, bearing interest from date, with good security, payable in twelve months for the residue of the purchase money, and shall retain the title to, and a lien on said lands for the residue of the purchase money, until the same is fully paid. He shall return a report of sales made by him to the Court from which he received his appointment, and also the auditor, designating particularly the local situation of each tract, the name of the purchaser, the price at which it was sold, and the cost of sale, and the Court shall confirm the report unless it be expected to and competent evidence be offered to show that it should be set aside. He shall also return the bonds taken for the deferred installments of the purchase money to said Court, and they shall have the force of judgments; and upon the failure of the obligors to pay the same when due, to the commissioner, it shall be his duty to employ a competent and reliable attorney who, after giving the obligors ten days' notice, shall move said court for an award of execution on said bonds, for which services he shall be allowed

the same fees as on other motions of a like kind, which, together with the other necessary costs and commissions attending the collection of said bonds, shall be taxes and included in the execution. The commissioners shall pay into said Court all moneys collected or received by him on such sales, and the court shall thereupon make an order allowing him such commissions, not exceeding ten per cent. and other reasonable expenses attending the survey and sale of said lands, as in its judgment may seem proper, and direct the residue thereof to be paid into the State treasury for the benefit of the school fund.

"6. It shall be the duty of the prosecuting attorney in each county to appear and represent the interests of the State in all matters pertaining to the sales and other proceedings directed by this chapter. * * * *

"When a purchaser of any lands at such sale shall have paid the whole of the purchase money, the court shall direct said commissioner (or another commissioner appointed for the purpose) to convey to the purchaser all the interest of the State in said lands. He shall return a report of sales made by him to the court from which he received his appointment and also to the Auditor, designating particularly the local situation of each tract, the name of the purchaser, the price at which it was sold, and the costs of sale.

"9. No lands shall be sold under the provisions of this chapter, if any person shall have had actual continuous possession thereof, under color or claim of title for ten years, *and who, or those under whom he claims, shall have paid the State taxes thereon for any five years during such possession*, or for so much thereof as any person, other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees, shall have title or claim to regularly derived mediately, or immediately from, or under grant from the Commonwealth of Virginia or this State, not forfeited, which, but for the title forfeited would be valid, *and who, or those under whom he claims, has, or shall have, paid all State taxes charged, or chargeable thereon for five successive years*, after the year one thousand eight hundred and sixty-one, or from the date of the grant, if it shall have issued since that year, *or for so much of said land as any person other than those for whose*

default the same may have been returned forfeited or delinquent, shall have had claim to, and actual and continuous possession of, under color of title for any five successive years after the year one thousand eight hundred and sixty-five, *and have paid all State taxes charged, or chargeable, thereon for said period,* and the title of the State to such lands, shall be deemed to be transferred to, and vested in, such occupants, and to such other occupants as, under the constitution and laws of the State, are entitled thereto.

"10. Before any sale of lands is made under this chapter, the court *may direct* a survey thereof to be made to ascertain the quantity and bounds of the lands to be sold, and cause a plat and certificate of such survey to be returned and filed with the papers in the case, and may also, if deemed necessary, cause such plat and certificate to be recorded in the office of the clerk of the county court.

"11. The Court shall ascertain and allow all just expenses attending the reporting and sale of the said lands, and collecting the proceeds, and the commissioner shall pay the same out of the first moneys that shall come into his hands on account of the sale, and shall immediately pay the residue into the treasury.

"12. The former owner of any such land shall be entitled to recover the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which, if the land had not been forfeited, would have been charged or chargeable thereon, since the formation of this State, with interest at the rate of twelve per centum per annum, and the costs of the proceedings, if his claim be filed in the Circuit Court that decrees the sale, within two years thereafter, as provided in the next section.

"13. Any such owner may, within the time aforesaid, file his petition in the said Circuit Court, stating his title to such lands, accompanied with the evidences of his title, and upon full and satisfactory proof that at the time the title to said lands vested in the State, he had a good and valid title thereto, legal or equitable, superior to any other claimant thereof. Such court shall order the excess mentioned in the next preceding section to be paid to him, and upon a properly certified copy of such order being presented to the Auditor, he shall draw his warrant on the

treasury in favor of such owner, or his personal representative, for such excess. At any time before the sale of any such land as herinbefore mentioned, such former owner, or any creditor of such former owner of such land, having a lien thereon, may pay into court, by and with the consent of the court, all costs, taxes and interest due at the time, as provided for in section twelve of this chapter, and have an order made in the order-book of such court, describing the amount paid in, as well as the character of his claim to said land, which order, so made, shall operate as a release of all former taxes on said land, and no sale thereof shall be made. Provided, *that such payment shall in no way affect or impair the title to any portion of such land transferred to and vested in any person, as provided in Section 3, of Article XIII, of the Constitution.*"

The Supreme Court of Appeals of West Virginia has construed these statutes. In *McClure* vs. *Maitland*, 24 West Virginia, 561–581 the Court holds that: "The proceedings provided by chapter 134 of the acts of 1872-3 for the sale of lands for the benefit of the school fund are not judicial proceedings in the sense that they involve litigation between contesting parties, nor are they proceedings technically either *in rem* against the land, or *in personam* against the former owner of the land; but are in their character administrative, being simply a mode prescribed by the State for the sale of lands, which are her absolute property, and in the sale of which she alone is interested."

"2. The effect of Section 5 of Article XIII of the Constitution of this State, giving to the former owner the surplus proceeds of the land over the taxes, &c., does not confer upon him any interest in the land or right to participate in, or be a party to, the proceedings for the sale of it. The grant to him of such surplus proceeds is wholly gratuitous, and his claim thereto is confined to the proceeds as such and he can obtain them only in the manner prescribed by law."

"3. The former owner, having no interest in the land or the proceedings for its sale, is not entitled to be a party to the proceedings for the sale in the Circuit Court, and he consequently, cannot appeal to this Court." In the opinion the Court says: "The title to the land and all the right and interest of the former owner having thus by his default and the operation of the law become absolutely vested in the State and become irredeemable, she, having thus acquired a perfect title to, and unqualified dominion over the land, had the undoubted right to hold or dispose of it for any proper purpose, in any manner and upon terms and conditions she might in her sovereign capacity deem proper without consulting the former owner or any one else. For after the forfeiture had become complete, as it had in the case before us, the former owner had no more claim to or lien upon the land than one who never had pretended to own it. In the exercise of this perfect dominion over her own property the State saw proper to transfer and vest her title to so much of said land owned by her, in any person, other than those who occasioned the default, as such person may have been in the actual possession of, or have just title to, claiming the same and was not in default for the taxes thereon chargeable to him. And as to the lands the title to which was not transferred or otherwise released or exonerated, she elected to sell them at public auction and for that purpose appointed as her agents commissioners who were required by law to act under the direction and orders of her courts of record. The proceedings provided for effecting these sales have always been treated, as they were, and are in fact, both under the acts of 1837 and 1838, of Virginia and the Constitution and statutes governing this case, merely as *ex parte*. They are certainly proceedings neither *in rem* nor *in personam*; neither against the land itself nor against the former owner nor any other person. The laws as we have shown, by their own force, transferred to and vested the title to the land absolutely in the State

without any judicial inquiry or inquest of any kind. There could, therefore, be no necessity or reason for proceeding *in rem* against the land. That had already become the absolute property of the State and she had a perfect right to sell it without further inquiry. All the laws providing for the sale of these lands presuppose the title to have vested in the State prior to the commencement of the proceedings. In fact the whole authority of the commissioner and the jurisdiction of the Court are based upon the assumption that the unconditional title is in the State; for unless such is the fact neither has any authority to act. *Twiggs* vs. *Chevallie*, 4 W. Va., 463.

"And all the right, title and interest of the former owner having been completely divested, he has not a particle of interest in the land, no more than if he had never owned it. There is, therefore, no possible reason for making him a party or proceeding against him *in personam* or otherwise." Again, on page 580, the Court says: "The fourth section of the Constitution, *shows that the former owner, by reason of the forfeiture, was divested of every particle of interest in the land and its proceeds, and that he had no more title or right to either than if he had never had any interest in the land.* It necessarily follows then that the grant or claim thus conferred upon him, is a simple matter of grace, a gift without any consideration therefor, owing its whole existence to the volition of the grantor, and it is in no sense the recognition of a pre-existing right to, or claim upon the land or its proceeds. It is a mere bounty gratuitously bestowed by the State, which she had the undoubted right to give or not to give, the State unquestionably had the right, if she choose to make the gift, to fix not only its quantum, but also the form in which it should be received and the manner of its payment."

Anvil vs. *Iaeger*, Id. 583, to the same point.

As will be seen by Sec. 32, Chap. 117, Acts 1872-3, quoted above, " by the sale and purchase on behalf of the

State, all such estate, right, title and interest in the real estate sold, vested in the State, without any deed or other conveyance therefor to the State; subject only to the right of redemption as provided in the 33d section.

The Legislature by Sec. 33 of that act gave the privilege of redemption to the former owner, his heirs or assigns, etc. By chapter 134, Sec. 13 above quoted, when the title had become forfeited, absolutely fixed in the State, the Legislature, as a matter of grace (see *Maitland* vs. *McClure*, 24 W. Va., *supra*), when it permitted redemption of the land, limited this privilege to such persons as it saw fit. It conferred this privilege on the "former owner" or on "any creditor" of such former owner, and no others. The language is explicit. The same Legislature enacted both Chaps. 117 and 134 of the Acts of 1872-3.

If it designed to give the same privilege to the same classes of persons in each case, why discriminate in the terms employed in granting the privilege? In *Waggoner* vs. *Wolf*, 28 W. Va., 820, 828, the Appellate Court in West Virginia plainly indicates that this privilege of redeeming the land after forfeiture, by applying before a sale is made by the school commissioner, can be exercised only by the "former owner" or his creditor, and strongly intimates that a purchaser from the former owner cannot redeem. At the time of the forfeiture, the title, it is claimed by the appellees, was in Allen T. Caperton. By the forfeiture, which the appellees admit, and the law declares the title of Caperton became wholly divested and passed into the State unconditionally. After the forfeiture, Caperton could not have conveyed any title to these lands until he had redeemed. He died without exercising that privilege; and by his death the laws of descent in West Virginia conferred on the appellees, his heirs, no title to these lands. The title was in the State, and it could not be in the State and in the heirs of Caperton both at the same time; for the statutes forfeiting these lands excepted nothing of the title or interest of Caperton in these lands

which might descend to his heirs. The privilege of redemption only was offered, but that was extended to Caperton or his creditors. Caperton did not exercise it before his death; and the Legislature made no provision, whereby in such case where the title had been cut off from the owner himself in his lifetime, his heirs at law by right or grace could demand or exercise this privilege except the former owner and his creditor. The privilege of redemption is founded alone on the terms of the statute, *Keeley* vs. *Sanders*, 99, U. S., 445, 446. If the plain, fair meaning of the enactment does not justify it, it does not exist. The same strict rules which apply to others applies to infants, married women and others, unless the statute in terms makes exception in their favor. *Cooley on Taxation*, 533, 534. That this exclusion of all persons was the legislative intent in West Virginia, is seen by reference to Sec. 33, Chap. 117, where the privilege of redemption in that case is given to the former owner, his heirs or assigns, or to creditors having leins on the land, whereas at the same session the same body by the 13th Sec. of Chap. 134, excludes "heirs or assigns" from this privilege in the case there provided for. In 1881, at the time the proceedings by which these Caperton lands were pretended to be redeemed, there was no other statute in force governing the subject than Chap. 134, Sec. 13, referred to.

This being the state of the law, in August 1881, in the Circuit Court of Webster and Nicholas counties, the appellees filed their petitions (not claiming, nor being the former owners, nor creditors of the former owners), showing that the lands of Allen T. Caperton had become forfeited in his name, and the title vested in the State, and prayed that they might redeem such lands. The record, pp. 11, 12, 13, 14, 15, 16, contains the petition and order made thereon. These proceedings were abortive. They did not divest the title to these lands which by the forfeiture had become absolute in the State.

It is contended by the appellees that at the death of Caperton in July, 1876, the title to these lands descended to them as his heirs at law. But we have shown that by virtue, and, in the words of the statute, by the sale and purchase by the State in September, 1875, all the title, right and interest of Caperton passed at once to the State, subject only to the privilege of redemption in one year, which was offered to Caperton or his creditors. If this privilege was not exercised, the title of the State was perfectly absolute from the 26th of September, 1875.

If it be contended that Chap. 117, Sec. 30 makes a "saving as to persons under disability," it will be observed that the terms and purpose of that provision relate to the lands of infants, married women and insane persons, etc., "*whose real estate may have been sold during such disability.*" And such sales must have been made to individuals, and not to the State. This section has no pertinency here.

A. T. Caperton was under no disability when in September, 1875, the lands were sold in his name. And it will be observed that these lands were never entered on the land books of the proper county in any other name than that of A. T. Caperton.

Therefore it is not the fact that A. T. Caperton died, seized, or in any wise entitled to the lands claimed and described in the bill. The forfeiture thereof, divested every phase and fibre of his title, and at his death, was and had for nearly a year been in the State.

For over six years it was in the State, before the appellees undertook the unauthorized proceedings by which they now claim to have acquired the State's title. There can be no reinvestment of title in those in whom that title had not before been vested.

The statute, in a proper proceeding, does not reinvest title. It merely releases the title acquired by the State, and exonerates it from sale. Acts 1872–3, Chap. 134, Sec. 13.

The Circuit Court erred in holding that the appellees had redeemed the land, or had any title that could have been adjudicated in this suit, even if it had jurisdiction for any such purpose.

The title of A. T. Caperton, according to the proofs and the record, under the Constitution and Laws of West Virginia vested in the Appellants. The decree, therefore, is erroneous, on this ground, if for no other reason.

Sections 1 and 3, Article XIII of the Constitution of West Virginia, are as follows:

"1. All private rights and interests in lands in this State derived from or under the laws of the State of Virginia, and from or under the constitution and laws of this State, prior to the time this this constitution goes into operation, shall remain valid and secure and shall be determined by the laws in force in Virginia, prior to the formation of this State, and by the constitution and laws in force in this State, prior to the time this constitution goes into effect."

"3. [1.] All title to lands in this State, heretofore forfeited, or treated as forfeited, waste or unappropriated, or escheated to the State of Virginia, or this State, or purchased by either of said States at sales made for the non-payment of taxes as forfeited or escheated to this State, or purchased by it and become irredeemable, not redeemed, released, or otherwise disposed of, vested and remaining in this State, shall be, and is hereby transferred to and vested in any person (other than those for whose default the same same may have been forfeited or returned delinquent, their heirs or devisees) for so much thereof as such person has or shall have had actual and continuous possession of under color or claim of title for ten years, and who, or those under whom he claims, shall have paid the State taxes thereon for any five years during such possession; [2] or if there be no such person, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees) for so much of said land as such person shall

have title or claim to, regularly derived, mediately or immediately from, or under a grant from the commonwealth of Virginia, or this State, not forfeited, which but for the title forfeited would be valid, and who, or those under whom he claims has, or shall have paid all State taxes charged or chargeable thereon for five consecutive years after the year 1865, or from the date of the grant it it shall have issued since that year; [3], or if there shall be no such person as aforesaid, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees) for so much of said land as such person shall have had claim to and actual continuous possession of under color of title for any five successive years after the year 1865, and have paid all State taxes charged or chargeable thereon for said period."

Three classes of persons are designated here as entitled to the benefit of forfeited or lapsed titles:

1. The first clause requires these qualifications in order to obtain such benefit: Actual and continuous possession, under color or claim of title for ten years, and who or those under whom he claims, shall have paid the State taxes thereon for any five years, during such possession.

2. The second clause requires: Title, or claim to regularly derived, mediately or immediately from or under a grant from the Commonwealth of Virginia, or this State, not forfeited, which, but for the title forfeited, would be valid and who, or those under whom he claims, has, or shall have, paid all the State taxes charged or chargeable thereon for five consecutive years after the year 1865, or from the date of the grant if it issued since that year.

3. The third clause requires: Claim to and actual continuous possession of, under color of title for any five successive years after the year 1865, and payment of taxes for that time.

(*a*) Possession is not required in the second category. "Title or claim to" the land of the nature described, and payment of taxes for five years after the year 1865, are all

the conditions prescribed in order to secure the benefit of this clause.

"Title, or claim to" the land, "regularly derived, mediately or immediately from, or under a grant from the Commonwealth of the State," is shown by the appellants here: If any of the land purchased at the tax sales by Rich and others, had in fact been granted to McClary and others, in whose names they were sold; and if, as claimed by the appellees these titles under such grants had been forfeited to the Commonwealth of Virginia or West Virginia, under any of its forfeiture laws; then the State no doubt had regularly derived the title to such tracts; and when it sold them at its tax sales, in accordance with the terms of its statutes, and conveyed them, the grantees in such conveyances clearly, under the provisions of the statutes of 1869 and 1871, obtained all the title the State had in these lands. If the State held the title to these lands, at the time of the tax sale, and authorized her title to pass by the tax-deed, here was a complete and orderly derivation of the title to the McClary and other tracts that had been granted by and forfeited to the State, and her grantees are entitled to all the benefits that arise from this fact. Then, if as shown, the Caperton title had passed into the State by its purchase in 1874, and so remained for six years, before the attempted redemption in August 1881, by the second clause of Section 3, Article XIII, the appellants were entitled to the benefit of the title of Caperton if they had paid the taxes for the period of five years. A more regular derivation ef title under that clause could hardly be conceived.

The condition that the taxes should be paid was fully complied with. From 1869 to 1880, inclusive, the taxes on the McClary and other tracts were paid by the appellants, bringing them clearly within the terms of the second class of persons entitled to the benefit of the title formerly held by Caperton.

As we have seen, no possession is required to constitute a *taker of this title under this second clause.*

(*b*) Not only does the position of appellants justify their claim under the second clause, but by the terms and conditions of the *third* and *first* category they are entitled to avail themselves of the Caperton title. By the *third clause* of Section 3 of Article XIII of the Constitution of West Virginia no specific source of title is required. It prescribes only a "claim to and actual continuous possession of" the land "under color of title for any five successive years after the year 1865, and payment of the State taxes for that period. No definite kind of title is required. "Color of title" is sufficient, if there be shown the necessary possession and payment of taxes for the period stated.

What is "color of title"? It is that which has the semblance of title; anything in writing, however defective or imperfect, purporting to convey title to the land and which defines the extent of the claim.

Wright vs. *Mathison*, 18 Howard, 50.
Hutchinson Land Titles, secs. 389–390–395.

A tax deed void on its face is color of title.

Deputron vs. *Young*, 134 U. S., 241–254.
Hall vs. *Law*, 102 U. S., 461.
Core vs. *Faupel*, 24 W. Va., 246.
Adams vs. *Alkire*, 20 Id., 480.
Jones vs. *Lemon*, 25 Id., 630.

Actual possession does not define merely the earth beneath the foot. Possession of part is of the entire boundary described in the writing that gives title of color; that is, in the words of Section 3, Article XIII, "for so much of said land as the person shall have had claim to," who is otherwise capable of taking the benefit of this clause.

Kincheloe vs. *Tracewell*, 11 Gratt, 587.
Core vs. *Faupel*, 24 W. Va., 246.
Taylor vs. *Burnside*, 1 Gratt, 165.
Ewing vs. *Barrett*, 11 Peters, 41.
Ellicott vs. *Pearl*, 10 Id., 411.
Hunnicott vs. *Peyton*, 102 U. S., 333.
Armstrong vs. *Morrill*, 14 Wall, 120.
Deputron vs. *Young*, *supra*.

The statement of fact shows beyond question the actual possession required within the principles of this case.

Appellees' counsel urge that only a small quantity of either tract was actually in possession of appellants, and argue that it is therefore insufficient to confer on appellants the benefit of the third clause of Section 3, Article XIII. Granted for sake of argument. No question is better settled in West Virginia (and that also by statute) that it is the nature and character, not the extent of the actual possession, that determines the right in such case.

Taylor vs. *Burnside*, 1 Gratt, 165, 190.
Garrett vs. *Ramsey*, 26 W. Va., 370.
Code W. Va., Ch. 90, Sec. 19.
Hutchinson Land Title, Sec. 417, 475.

But, it must be kept in mind, that the possession required by the Constitution is only to be actual and continous and not adverse or exclusive.

Adverse possession is necessarily exclusive as well as actual; this is one of the elements of adverse possession. There can be no adverse possession against the State; and hence it would be a anomaly for the State to require such possession of one who is for that reason to take the lapsed title.

No possession can make a disseizin of the State, nor can it in any manner impede the effect of the sovereign

will in transferring forfeited titles, which she holds upon such terms and conditions as she may prescribe.

Smith vs. *Chapman*, 10 Gratt., 463, 464, *supra.*

The reason that requires possession to be exclusive and actual in order to be adverse, between individuals, would be an impossible rule where the State has the title bestow. No time can run against the State, unless she has permitted it.

By the very words of the Constitution, Article XIII, all persons their heirs or devisees are excluded from any benefit of that provision. Otherwise the delinquent land-owner might defeat the purpose of the provision of the Constitution.

The decree complained of is erroneous, because it sets aside as fraudulent and void the deeds under which the appellants claim title to the lands thereby conveyed.

The appellees are strangers to the title of the appellants. There is no privity by contract or otherwise between these contesting parties.

In determining upon the legal effect of validity of the tax sales and deeds under which appellants' claim, this fact must be borne in mind.

It is conceded that the sales of the tracts of land known as the McClary, Messingbird, Welch, De Fleuny and Banks tracts, were made on the 24th day of September, 1869, and 26th of September, 1871, and are, therefore, governed by the code of West Virginia, 1868, Chap. 31, and the statutes of 1869 and 1871; that the sale of the Highland track was made in 1875, and is governed by Chap. 117, Acts 1872-3; and that the deeds, pursuant to said sales, were made under Section 29 of Chapter 31, of the code of West Virginia, and Chap. 117, Acts 1872-3. The sales were made at the proper time

in accordance with the letter of the statute, code West 1868, Chap. 31, and as amended by Chap. 117, Acts 1872-3.

By Section 15 of Chapter 31, the owner of any real estate sold for taxes, his heirs or assigns, or any persons having a right to charge such real estate for a debt, may redeem the same by paying to the purchaser, his heirs or assigns, within one year from the sale thereof, the the amount, etc.

The 16th section prescribed how such redemption may be made where the purchaser refuses to receive the money, or may not reside in the county, etc.

So much of this statute as relates to the rights of the purchasers, if the land sold be not redeemed, as is necessary for this case, is found in Sections 19, 25, 26, 27, 29, of Chap. 31, Chap. code West Virginia, and the same in effect as in Chap. 117, Acts 1872-3, which are as follows:

19. After the expiration of the said one year, the purchaser of any real estate so sold and not redeemed shall obtain from the recorder of the county in which the sale was made a deed conveying the same, in which shall be recited all the material circumstances appearing in his office in relation to the sale. The oath and certificate annexed to any list, and the disposition of the list, need not be mentioned. If the sale be of part of the tract of land, the deed shall refer particularly to the plat and description returned, and the order of the recorder thereon; and if the sale be of an entire tract of land, it shall refer to the report made, and the order thereupon. If the sale be of a town lot, or of an undivided interest in such lot, and a report be made by a surveyor describing the same, and such report be ordered by the recorder to be recorded, the deed shall refer to the said report. But when, in case of a sale of a town lot, or of an undivided interest in such lot, there is no such report, the recorder shall nevertheless execute a deed therefor to the purchaser, if he desire the same. For every deed executed under this chapter, the recorder, commissioner, or clerk shall be entitled to three dollars, which the purchaser shall pay on the delivery of the deed.

25. When the purchaser of any real estate so sold, his heirs or assigns, shall have obtained a deed therefor, according to the six preceding sections, and caused the same to be admitted to record in the office of the recorder of the county in which such real estate or the greater part thereof may lie, such estate shall stand vested in the party assessed with the taxes for which it was sold, or as was vested in the heirs or devisees of such party, if he be dead, or as was vested in any person or persons claiming said real estate under, by, or through such party or his heirs or devisees, or in any other way whatever, [In this section (25) as amended, chapter 117, acts 1872–3, it is provided that not only the estate of the party in whose name the land was sold shall *rest in the purchase, but also such "estate as was vested in any other person or persons having title thereto who have not in his or their own name, &c.,"*] who have not in his or their own name been charged on the assessor's books of the proper county or district with the taxes *on said real estate for the year or years for the taxes for which the same was so sold, and actually paid the same as required by law at the commencement of, or, at any time during the year or years for which the said taxes were assessed*, notwithstanding any irregularity in the proceedings under which the said grantee claims title, unless such irregularity appear on the face of the proceedings of record in the office of the recorder, and be such as materially to prejudice the rights of the owner whose real estate is sold. When there are more than one of such owners who are co-tenants of the real estate, if the same be charged to one of them alone, or one and others without naming the others, such estate as was vested in all, or any, or either of them, shall pass to the grantee in such deed. When the real estate is charged to heirs by description or to the estate of a deceased party, such estate as was vested in the heirs or devisees of the decedent shall pass to the grantee in such deed. When more than one tract of land is charged as one, or the quantity or residence of the party is misstated, the title shall nevertheless pass to the grantee in such deed. No irregularity or overcharge as to a part of such taxes or purchase money, nor payment of part of such taxes, shall invalidate the sale, except as to a part of the real estate so sold proportioned to the whole thereof, as such part of the taxes or purchase money is to the whole thereof. If the real estate be charged to a trustee by name,

either with or without the addition of "trustee," or where there are more than one trustee, if it be charged to one or more of them and others, without naming the others, and with or without the addition of "trustees," or if it be charged to such trustee or trustees by description, without naming any of them, the title of such trustees and of each and every person for whom or for whose use the said real estate was held in trust by such trustee or trustees, shall pass to the grantee in such deed. If at the time of such sale the real estate sold be under a mortgage or deed of trust, or there be any other lien or incumbrance thereon, and the mortgagee, trustee, *cestui que trust*, or person holding any such lien or incumbrance shall fail to redeem the same within the time prescribed by the fifteenth section of this chapter, then all the right, title and interest of such mortgagee, trustee, *cestui que trust*, and of the person or persons holding any such lien or incumbrance on the real estate so sold and not redeemed, shall pass to and vest in the grantee in such deed, and his title to the premises shall, in no way, be affected or impaired by any such mortgage, deed of trust, lien or incumbrance. And no irregularity as to the manner of laying off any real estate so sold, or in the plat, description or report of the surveyer or other person, shall, after the deed is made, invalidate the sale or deed. If the deed be valid under the sale for the state taxes, it shall not be affected or impaired by any irregularity in the proceedings and sale for the county and township taxes, or either.

26. If it be alleged in any suit or proceeding that the taxes for the non-payment of which the real estate was sold were not in arrear, the party making such allegation must establish the truth thereof by proving that the taxes were paid, as provided in the next section.

27. If the owner of any real estate sold for the non-payment of taxes thereon, his heirs or assigns, claim that the taxes on account of which the sale was made were not in arrear, he may, within five years after the deed shall have been obtained and admitted to record, institute a suit in equity against the purchaser, his heirs or assigns, alleging the payment of the taxes, and seeking to have the sale and deed declared void, or he may within such time, in any suit or action pending relative to the real estate, in

which the payment is not alleged, give to the purchaser, his heirs or assigns, parties thereto, notice in writing of his purpose to prove the fact of such payment, or file such notice in the case at least thirty days before the hearing or trial thereof; and having done so, may in such suit or action prove that such taxes were paid. But unless he shall within the said five years, institute such suit or give or file such notice in a suit or action pending relative to such real estate, he shall not prove such fact, or on such account in any way question the validity of the sale or deed.

29. In all cases in which a question shall arise, as to any such sale or deed, or the effect thereof, such deed shall be *prima facie* evidence against the owner or owners, legal or equitable, of the real estate at the time it was sold, his or their heirs or assigns, and all other persons who might have redeemed the same, within the said one year, as hereinbefore provided, *and conclusive evidence against all other persons*, that the person named in the deed as recorder was such, that the material facts therein recited are true, and that such estate as is mentioned in the 25th section of this chapter vested in the grantee in the deed.

By Section 4 of Chapter 31, the Auditor of the State was required to send down lists of delinquent lands to the Sheriff of each county, for advertisement and sale.

This had been done, and the lands claimed by the appellants were included in the lists so certified and delivered to the Sheriff of Webster county in July or August 1869.

Sales were made of the McClary 100,000 acres and the Henry Banks tract of 58,000 acres on the 24th of September, 1869, for delinquent taxes, and Albert Owen, G. P. Shreve and B. Rich became the purchasers. (See printed Record, pp. 23–24, exhibits E. and F.)

On the same day, September 24, 1869, the same persons at the same tax sale became the purchasers of a tract of 12,500 acres. (See exhibit 44, 45 Record, p. 178.)

In September 1871 at a delinquent land sale in Webster county, B. Rich and Thornton Conrow purchased a tract of 100,000 acres delinquent in the name of De Fleury, Viscount Clifford. (See exhibit 1 Record, p. 34.)

On the 5th of October, 1875, the Sheriff of Webster county at a tax sale, sold to Benjamin Rich a tract of 65,734 acres of land. (See exhibit T. Record, p. 204.) Rich assigned the benefit of one-third of this purchase to Thornton Conrow and another third to Walter Wood.

These lands were duly returned as sold to the parties named, and official records were made both in the clerk's office of the County Court of Webster and in the office of the Auditor of the State at the seat of State government.

After the time had fully elapsed, as prescribed by the statute governing such sales, the land sold not having been redeemed, conveyances were made to the purchasers and to their assigns, in accordance with the provisions of the statute.

By the terms of section 25, above quoted, as in the original act and as amended, when the purchaser has obtained a deed for the real estate so sold at such sale, and such deed has been recorded in the county where such real estate is situated, such estate shall stand vested in the grantee in such deed in and to said real estate as was vested in the party assessed with the taxes for which it was sold, or as was vested in the heirs or devisees of the said party, if he be dead, or as was vested in any person or persons claiming said real estate under said party, his heirs or devisees, *or in any other way whatever*, or such estate as was in any persons having title thereto, who have not in his or their own name, been charged on the assessor's books of the proper county or district with the taxes on said real estate for the year or years for the taxes on which the same was so sold, and actually paid the said taxes as required by law, at the commencement of or at any time during the year or years for which the said taxes were assessed, notwithstanding any irregularity in the proceedings under which the said grantee claims title, unless such irregularity appear on the face of the proceedings of record in the office of the Recorder *and be such as materially to prejudice the rights of the owner whose real estate is sold.*

Here two purposes of the statute Section 25 are evident. First, to transfer the title of the person, his heirs or devisees, in whose name the land was assessed. Second, to transfer the title of any person claiming such land "*in any other way whatever*," who has not been charged in his own name on the land books with such real estate, *and actually paid the taxes thereon* for the years for *which the land was sold, etc.* This purpose is carried down through the subsequent amendments of this chapter. (Hutchinson L. T., sec. 300.)

On the 4th of March, 1869, the Legislature of West Virginia passed Chapter 125, Acts 1869, p. 88. Section 7 of that Act reads in part as follows:

"It shall be the duty of any person owning real estate to cause the same to be entered on the land books of the proper assessor and charged with the State taxes thereon not charged to the owner, for the year eighteen hundred and thirty-two, or any year thereafter, heretofore or hereafter, not released, paid or in any manner discharged, which were and shall remain properly chargeable thereon. *When any person owning real estate has not, or shall not have for five successive years, been charged on such books with such taxes on such real estate, the same and all the title, right and interest of the owner, legal and equitable thereto, shall, without any proceeding, be absolutely forfeited to and vested in this State.* Provided, however, that such owner may, within one year after the passage of this Act, cause such real estate to be charged with such taxes, chargeable for any such years heretofore, and thereby prevent a forfeiture for the failure so to charge the taxes for such years."

On the 1st of March, 1871, Act, 1871, Chapter 194, the Legislature of West Virginia passed the following:

"When any real estate has been, since the formation of this State, or shall be hereafter sold for the non-payment of taxes thereon, and purchased for and vested in the State, and become irredeemable, or forfeited to and vested in the State, and the same, or any part thereof, shall be hereafter sold in the name of any person who has been charged on the assessors' books with taxes on such

real estate, for the non-payment of taxes thereon, and purchased by any person, and not redeemed within one year from such sale thereof, and he, or his heirs or assigns shall obtain a deed therefor and cause it to be admitted to record, so that, but for such sale and purchase for the State, or forfeiture to the State, he or they would have title to such real estate, or any part thereof, any title of the State, acquired as aforesaid, which it may then have to such real estate, or any part thereof, shall be and stand vested in him or them."

Hutchinson Land Title, Section 259.

Now, if it is true, as the appelles assert, that A. T. Caperton, or the appellees, had "any title whatever," to any part of the real estate, which was so sold for taxes in the years 1869 and 1871 and 1875, and had not been charged with the taxes for the years for which said lands were sold, and had not actually paid those taxes then, as provided in said Section 25, Chapter 31, such title whatever its nature or description, was transferred to the grantees by the deeds referred to. Not only so, but by the act of March 1 1871 all the title that had become vested in the State by forfeiture, or by purchase for the non-payment of taxes thereon, passed by the deeds and became vested in the purchaser, his heirs or assigns. This act applies to sales of real estate made at any time since the formation of the State to wit, June 20, 1863. So, that if it is true that the tracts purchased by Rich and others at the said tax sales in September, 1869, September, 1871, and October, 1875, had at that time been forfeited to the State in the names of any persons, such title or titles then in the State acquired by such forfeiture to such real estate or any part thereof, became and was vested in the purchasers at said sales.

These provisions of Chapter 31 Section 25 and of the Act of March 1, 1871, are in exact harmony with the system of transferring titles to land sold for taxes, which grew up in Virginia under the Act of February 27, 1835,

which is found at large in Hutchinson Land Titles Sec., 148–163.

Prior to that Act, according to the Court of Appeals of Virginia. sales and conveyances of land delinquent for the non-payment of taxes passed only the title and interest of the party who was in default, and in whose name the land was sold.

Chap. 31, Sec. 25, and the Act of March 1, 1871, referred to, effect together the same end that was accomplished by the Virginia Act of February 27, 1835, and they even go further.

In *Smith* v *Chapman* 10 Gratt., 445, the Court, in the opinion delivered by one of the most eminent Judges in this country, who was particularly distinguished for his thorough knowledge of the land laws of Virginia, Judge LEE, on this subject, said: "It cannot be doubted that the policy of the Legislature, in the various acts concerning delinquent and forfeited lands, was not only to secure to the Commonwealth her just dues, but also to quiet titles in the western part of the State; and to remove the check to population and the settlement and improvement of the country which their unsettled condition served to create. This latter feature of the legislative policy is distinctly avowed in the preamble to the second section of the act of 1835, Sess. Acts, p. 12, and is plainly manifested by the general scope and tenor of the whole Legislation upon the subject. And although there is no express declaration to that effect, yet it can scarcely be supposed that at the time of the passage of the act providing for the sale of forfeited lands, the fact so universally notorious in the western portion of the State, that the same lands had been in many instances forfeited to the Commonwealth under several different titles, was unknown to the Legislature. Indeed we see that one of the duties assignee to the Commissioner of Deliquent and Forfeited Lands by the third section of the Act, of 1837, Sess. Acts, p. 10, was to report to the Court all the information they could procure in relation to the

state of the title to such lands as has become forfeited; and no matter concerning the title to land supposed to be forfeited could be more pertinent or important than the fact in any given case that the land in question had been forfeited under several different rights. Now where in any given case the commissioners should report that a tract had been so forfeited under several and distinct titles, it can hardly be supposed that any Court would direct two several the same land, putting several titles into market at the different sales. So if after a decree for the sale of a tract of land, ascertained to be forfeited under one title, the commissioners were to report the same land as also forfeited under another and different title, no court would have thought it right to direct a second sale of the same land under the latter. The policy of the laws on the subject was to quiet titles as far as possible and to convey a good title under these sales as far as the commonwealth had the means of so doing. Certainly nothing could tend more directly to thwart this policy than to give these laws the construction contended for by the defendent in error. If there could be several successive sales of the same land because it had been granted to several distinct patentees, all of whom, or those claiming under them had suffered it to become forfeited by failing to comply with the revenue laws, and these sales but served to transfer to the different purchasers the several different titles of the parties so in default, the effect would only be to stir up the smouldering embers of litigation with all the newborn zeal which the different purchasers might be supposed to bring the subject of their speculation. It "would but serve to make confusion worse confounded," and to aggravate all the evils which it was the purpose of the Legislature to remove."

"There is a plain difference between the sales authorized by the Act of February 9, 1814, 2 Rev. Code, 1819, p. 542, and those to be made under the Act of *March 30, 1837*. By the express provisions of the former Act, the

sales were of the title and interest of the parties in default only. The Commonwealth claimed not to be invested with the title to the lands, but only to assert a lien upon them for the taxes due her; the title remaining in the owner till the sale was made. The thirty-seventh section of that Act accordingly expressly limits the operation of the deed made to the purchaser to the conveyance of such interest and estate as was vested in the person in whose name the land was returned delinquent, and the extinguishment of any use, trust or equity of redemption. The latter Act presupposes that the title to the land sold is vested in the Commonwealth at the time of the sale. It did not design to provide a means for creating or declaring forfeitures, but a convenient mode for ascertaining what forfeitures had accrued, and of disposing of the lands thus acquired by the Commonwealth. It assumed that the Acts declaring the forfeiture of lands for the failure of owners to comply with the revenue laws, were sufficient *proprio vigore* to work out their own purpose, and to transfer the title perfectly and effectually to the Commonwealth, and in the proper cases, through her to those claiming under another grant, who were in a condition to avail themselves of the provisions for their benefit. Hence it directs the lands to be sold as the property of the Commonwealth, in all respects as in the case of other lands directed to be sold under decrees of the court; and directs the commissioner to convey to the purchaser all the interest of the Commonwealth in the lands so sold. No discrimination is made between the different titles that may have become vested in the Commonwealth by virtue of several forfeitures; but the whole, constituting the entire estate and interest of the Commonwealth, is transferred to the purchaser. The deed to be made is to be a conveyance in fee simple of the Commonwealth's whole right derived to her by forfeiture, without regard to whatever delinquencies may have occasioned it, or to the different sources from which the several forfeitures, if more than one, may have accrued.

It is true the Commonwealth gives no warranty of the title conveyed, and if there be a better outstanding than that of the Commonwealth, the purchaser takes no indemnity against it. But whatever right is in the Commonwealth, derived by forfeiture under the revenue laws, must pass, and the deed conveying her interest must stand as an estoppel to the Commonwealth to set up any other title by forfeiture existing in her at the time of the sale. The effect of the deed, so far as title acquired by forfeiture is involved, would be the same as that of a grant obtained under the thirty-fifth section of the Act of December 13, 1792, 2 Rev. Code, 1819, p. 525, which made forfeited lands subject to entry and patent. If the same land had been forfeited under two several titles and a grant were obtained under the provisions of this section, it can scarcely be doubted, I apprehend, that the whole of the Commonwealth's interest acquired by both forfeitures would pass to the grantee."

The validity of the statute Chapter, 31 Section 25 and of the Act of March 1, 1871, have never been questioned. *Wild* vs. *Serpell*, 10 Gratt, 408; and in the light and spirit of interpretation which flows upon them from the learned opinion just quoted, if the titles to the land of McClary, Messingbird, Banks and De Fleury or Highland, were forfeited to the State of Virginia or West Virginia, under any circumstances whatever, after their sale and conveyance under said proceedings to the appellants or those under whom they claim, all such title as the former owners may have had, all title held by the State under any of its delinquent or forfeiture laws was transferred to the grantee in said tax-deeds.

See *Flanagan* vs. *Gummet*, 10 Gratt, 421.

But it is urged by the appellees, that the land claimed under tax-deeds by Rich and his assigns, were improperly or irregularly assessed, that they ought not to have been charged with taxes, nor been returned delinquent; nor

sent down by the Auditor of State to the Sheriff of Webster county to be sold. And to give a color to this pretension, it is charged that the land assessor, the Sheriff and other officials had suddenly fallen from their high estate of good character and integrity, and started on a piratical voyage on the muddy waters of fraud.

What is the standing of the appellees, that they presume to make such charges?

The deeds made by the proper officers of Webster county, conveyed the lands claimed by appellants, were made according to the terms of the statute Chapter, 31 Section 25, heretofore quoted at large. These deeds are all in due form, perfectly regular, and are supported by the proper circumstances of sales.

By Section 29 Chapter 31, when the deed to the purchaser has been made, in all cases in which any question shall arise as to any such sale or deed, or the effect thereof, such deed shall be *prima facie* evidence against the owner or owners, legal or equitable, of the real estate at the time it was sold, and all other persons who might have redeemed the same, within one year; *and conclusive evidence against* all other persons, of these facts: (1 That the person named in the deed as recorder was such. (2) That the material facts recited in the deed are true. (3) That such estate as is mentioned in the 25th Section vested in the grantee in the deed. (See Sec. 29, *supra.*)

This Section (29) precludes the appellees from raising any question, in this or in any proceeding, as to the truth of any of the material facts recited in the deeds, or from disputing the title that vested in the grantee in said tax-deeds, because being strangers to the titles sold at the tax sales, and not the owners, legal or equitable, of the real estate so sold, *the deeds are conclusive evidence against them.*

As seen by the terms of said Section 25 the irregularity, even where it can be called material, must be such as to materially prejudice the rights of—whom? Any person who may have any adverse claim against the land? No;

the statute says: "The rights of the owner whose real estate is sold." Who is this? It must be the person in whose name the real estate has been assessed with taxes.

On what principle, even at common law, would appellees be permitted to attack, in a collateral manner, the regularity of proceedings *inter alios?* Their intervention, is not only not suffered; is denied by the letter of the law.

These lands were not assessed and sold in the name of Caperton. It is charged that they were assessed and sold in the names of McClary and others; that McClary had no title to be sold; that Caperton had title to the lands; had paid his taxes and his title was not sold. Certainly it is no matter to the appellees, how many errors or irregularities were committed in assessing or returning as delinquent, or listing and selling the lands purchased by Rich and others.

It is conceded that as *to the owner* in whose name the land was sold for taxes, the legislature could not do more in giving effect to the deed as evidence than declare it *prima facie.*

Allen vs. *Armstrong*, 16 Iowa, 508.
Callanan vs. *Hurley*, 93 U. S., 387.

But as to third parties, strangers to the proceedings, the Legislature could make the deed conclusive as to the facts specified in Section 29. It would be remarkable that any other view should be taken. So far as the appellees represent their own individual claim under the Caperton title (and in this suit they represent nothing more), it is wholly immaterial what they imagine or discover as doubtful or illegal in the origin of the tax sales and conveyances in question. They cannot legitimately assume the position of the "former owners," whose title were sold, or of the State which authorized the sales, and received into its treasury the money realized at such sales.

Fifth.

AS TO THE ALLEGED FRAUD.

The titles of appellants did not eminate from or pass through the appellees or those under whom they claim. They had distinct and independent sources. In fact, the titles of appellants came directly by grants from the official agents and authority of the State of West Virginia; and it is settled law of this Court that "when a grant or patent for land, or legislative confirmation of titles to land, has been given by the sovereignty or legislative authority only having the right to make it, without any provision having been made in the patent or by the law to inquire into its fairness between the grantor and grantee, or between third parties and the grantee, a third party cannot raise in ejectment, the question of fraud as between the grantor and grantee. *Field* vs. *Seabury*, 19 How., 324.

That was a writ of error, but this Court adds, that a Bill in equity lies to set aside a patent obtained by fraud *but only between the parties to the grant; that is, the State and the grantees.* *Maxin* vs. *Schilling*, 12 Mich, 356. 1 Bigelow, on Fraud, 209, Sec. 4.

Conduct cannot be deemed fradulent which cannot and does not admit of a fraudulent intent. No transaction can be deemed a fraud upon A which did not and could not affect him in any manner whatsoever.

Neither can A complain of an alleged fraud upon B.

To entitle complainant to come into equity with a question of title on the ground of fraud, he must not only show a fraud upon himself, or upon those under whom he claims, but that in consequence thereof he is in need of equitable relief.

The proofs do not show, and the bills do not charge any fraud by the defendants, or by those under whom they claim, upon complainants or their predecessor in title, or upon anybody else.

Even if the acts and conduct, so stigmatized, were true as alleged, this record would present no ground for the intervention of a court of equity.

There are only two elements in this alleged conspiracy: the assessment of appellants' lands for taxes and the subsequent purchase.

The assessment was caused by John B. Schreve, who had nothing to do with the purchase; the purchase was made by appellant Rich who had nothing to do with the assessment.

There was an interval of nearly two years between the two acts.

When Schreve suggested to the officer the propriety of listing these lands for taxation he had never heard of Rich and did not know that he would buy. When Rich determined to buy, he knew nothing of the circumstances by which they had come to be assessed, and relied solely on the fact that the State of West Virginia was exposing these lands for sale for taxes which she said were due her.

But suppose Schreve and Rich had acted in concert from the beginning. No concert of any sort was proved between them, nor even between Schreve and Owens.

But suppose the fullest concert had been proved, the sales of transaction still would be neither a fraud nor a conspiracy.

The bill sets out a transaction which is described as a fraud, but the transaction cannot be deemed a fraud upon the complainants, because there was not in any part of that transaction any violation of duty by the defendants, or their predecessors in title, to the complainants and their predecessors in title; nor was anything said or done by the defendants or their predecessors whereby the complainants or their predecessors were misled to their hurt.

There are only two ways in which this transaction could operate to the prejudice of the complainants.

First.—As the basis of a claim of title to the lands in question by adverse possession under the general statute of limitations.

In this aspect of the case, the transaction is no more a fraud upon the complainants than any other attempt to acquire land by adverse possession with color of title would be.

Second.—As a basis of a claim of title under the Constitution and statutes of West Virginia, which declare a forfeiture to the State of all titles under which the land claimed has not been entered upon the assessors' books for taxation for five consecutive years, or which have been purchased by the State at tax sales, and not redeemed within one year, and which further declare that "all title" in such land shall be transferred to and vested in one or the other of the three classes of claimants with color or claim of title, recognized in said Constitution and statutes. (*Supra* p. .)

In this second aspect of the case the transaction could not be the occasion of any damage to the complainants which did not result proximately, and therefore solely from their own default.

They lost whatever title they may have had by reason of their default, and not by reason of anything which was done by the defendants or their predecessors in title.

It is precisely such colorable titles which are protected and confirmed by the Constitution and statutes of the State, when those who once had a better right fail to discharge their duties as taxpayers, and thus lose the estate which they would otherwise have continued to enjoy.

Complainant's allegation of fraud is merely the allegation of a state of facts which they allege gave to defendants only a colorable title.

It is only because the transaction eventuated in what complainants allege to be merely colorable title that they assume to characterize the transaction as a fraud.

The so-called fraud is not in the transaction, but in the result.

When the junior patent is issued for land previously granted by the Commonwealth, the junior patentee obtains only color of title, but the transaction is not fraudulent, although he has notice of the prior grant.

If such an act were fraudulent it would be impossible for him to obtain title under his grant by adverse possession or in any other way. He would be in the position of a tenant who should seek to make title by continued possession and failure to pay rent, without notice, to his landlord of his hostile intent.

An application for a patent for lands known to have been previously granted by the Commonwealth is no way distinguishable in purpose and method from an attempt to obtain title to land by placing it upon the assessor's book for taxation (on which books it was already assessed in another name, and the taxes paid), with the intention of allowing the land to become delinquent under the new assessment, and by buying it in at the consequent sale.

In both cases the most that can be said is that only a colorable title is obtained, and in both cases, should the better right be forfeited under the Constitution and statutes of the State, the result would be the same.

The Bill itself admits the forfeiture of complainant's title, and the purpose of their suit is simply this, that having lost their own title by their own default, they now seek to overturn defendants' perfect title on the ground that, in its inception, defendants' predecessors acquired only color of title.

If such conduct as that with which appellees in their Bill have charged appellant's amounts to a fraud in law or in equity, it follows that every man commits a fraud who puts himself in the way of obtaining an independent title to land, when a careful and exhaustive examination would have shown that the premises were already claimed by another, under a title apparently better than the one he was seeking to obtain.

It is submitted that no court of equity or law has ever placed such a limitation upon the promptings of self-interest, as would compel every man who attempted to obtain an independent title to land, to decide in advance upon the validity of all possible conflicting claims, under penalty of being held guilty of fraud.

The inhabitants and land-owners of the Virginias would receive with unfeigned astonishment the announcement of a doctrine so entirely at variance with the jurisprudence of, and with the history of, land titles in the community where the lands in question lie.

Can there be any doubt then that when a man, as in this case, buys land at public outcry, at a regularly conducted sale, knowing nothing of the circumstances which led to the assessment and sale, the attempt to charge him with fraud for so doing, is a purely gratuitous asperasion ?

If we should concede that Rich acquired no title at all at these sales against appellees that would not make him guilty of fraud in paying the State the taxes, which she claimed and in taking a deed from the State.

But, assuming all the charges to be true, as alleged, and characterizing them as we may, they present no reason for the interposition of equity.

The equitable jurisdiction must always be founded upon some insufficiency or want in the law. Complainant must show, not only the fraud, but that by reason thereof, the legal remedy has become inadequate, prejudiced or destroyed before the fraud justifies the interference of equity.

There is nothing charged, nor does anything appear in the record of this case from one end to the other which presents any obstacle whatever to a recovery at law; on the contrary, it presents the typical case as to which the legal remedy has always been deemed full, adequate and complete.

Since the allegation of fraud in the case at bar is made solely for the purpose of showing defendants' title to be colorable only, when contrasted with the title of complainants, which allegation is coupled with an averment of a perfect title in complainants; it follows that the issue presented in this case is purely a contest between conflicting claims of title.

In other words, complainants' bill, while nominally invoking the intervention of a court of equity on the ground of fraud and in the interest of peace are, in reality, ejectment bills.

JOHN F. KEATOR,
JNO. A. HUTCHINSON,
Solicitor for Appellants.

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No. 325

October Term, 1893

Supreme Court of the United States

BENJAMIN RICH *et al.*

Appellants

vs.

TAMLIN BRAXTON *et al.*

Appellees

Appeal from the Circuit Court of the United States, for the District of West Virginia.

BRIEF FOR CONROW'S ADMINISTRATORS, APPELLANTS

S. MORRIS WALN

Of Counsel for Appellants

IN THE

Supreme Court of the United States.

October Term, 1892. No. 325.

Case No. 13.996.

BENJAMIN RICH *et al.*,

Appellants,

vs.

TAMLIN BRAXTON *et al.*,

Appellees.

Statement of the Case.

In 1869 the appellants, or persons from whom they claim purchased certain tracts of land situate in the State of West Virginia at a sale by the State for delinquent taxes, under the name of Welsh, Banks & McClary. They received deeds from the State for said lands, which were then recorded, and they at once took possession of said lands and leased it to tenants and put them in possession. They regularly paid all taxes on said lands, which, up to the year 1881, (date of this suit), amounted to about $20,000.00, and since the suit have continued in the possession of said lands and regularly each year paid the taxes thereon. No person ever disputed appellants' possession or title to said lands until the 8th day of August, 1881, when appellees filed their bill in

equity in this case in the Circuit Court of Webster county, West Virginia (removed to the U. S. District Court), claiming (*inter alia*) (1) That they were the owners of a portion of said lands as heirs at law of Allen T. Caperton, deceased. (2) That appellants' deeds were void on their face and a cloud on appellees' title. (3) That about one year before this suit was instituted appellants took possession of the land and leased a part and sold a part and that their tenants were still in possession. The prayer was: First—That the deeds to and from appellants and leases by them be declared void. Second that a writ of possession be awarded plaintiffs. By their answer defendants claim title in themselves and deny that plaintiffs have any title. Second—Defendants aver that under Art. XIII, Sec. 3, of the Constitution, they also acquired the Caperton title before this suit was instituted. Third—That the common law action of ejectment is the proper and only remedy under the facts as stated in plaintiffs' bill and that no ground has been shown for equity jurisdiction.

It appears from said bill that appellees claim title as heirs at law of Allen T. Caperton, who died intestate in July, 1876. It is admitted that in his lifetime no taxes were ever paid by said Caperton, or any person for him, from 1873 to August 11, 1881. That on the 5th of October, 1875, the Caperton lands were sold for deliquent taxes of 1874, and pnrchased by the State, and that said lands were never redeemed.

But the appellees claim that they recovered the title by their *ex parte* redemption proceedings.

That decree is dated August, 5th and 11th, 1881, three days after this suit was instituted (see printed record, page 16), and is void as to appellants.

The deed from the State to Rich, under which appellants claim, and the leases executed by Rich to his tenants, were as early as 1870 or 1871, made known to Mr. Caperton by his agent, Mr. Sawyer, who sent him copies thereof. Mr. Caperton not only allowed Mr. Rich and his tenants to re-

main in possession, but after 1873 he paid no taxes and allowed the lands to be sold and the title, such as he had, to be forfeited by the sale for delinquent taxes on the 5th day of October, 1875, and although Mr. Caperton lived nearly a year thereafter, he made no attempt to redeem the same according to law.

The Caperton lands from 1874 to 1882 were not on the tax books, and the Caperton title was doubly forfeited for non-entry for a period of over five consecutive years.

By the latches of appellees and their ancestor the Caperton title on the fifth day of October, 1875, became forfeited and vested in the State, and no taxes were paid by them for the years 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, five years and over. The appellants had actual possession of said lands under the tax sale in 1869 and deed by the State to them, and regularly paid the taxes each year for the years 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880 and 1881, a period of eleven years.

The Caperton title by the latches of appellees and by virtue of Art. 13, Sec. 3 of the Constitution of the State of West Virginia, passed from Caperton to the State and from the State to appellants, and became vested in them long before the present suit was instituted.

When counsel for appellants appeared in the Court below for argument the learned Court refused to hear any argument or to examine appellants' brief, and at once signed the decree prepared by appellees' counsel.

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Specifications of Error.

1. The learned Court below erred in holding that the plaintiffs had title to the land claimed at the time they filed the Bill.

2. The learned Court below erred in not holding that the plaintiffs had no title to the land claimed at the time they filed the Bill.

3. The learned Court below erred in not holding that the title claimed hy the plaintiffs had been forfeited absolutely to the State of West Virginia because it had been sold for non-payment of taxes and purchased by the State and was not redeemed at the time the bill was filed.

4. The learned Court below erred in not holding that the said title claimed by the plaintiffs had passed from the State to the defendants under Section 3, Article 13, of the Constitution of West Virginia before this suit was instituted.

5. The learned Court below erred in not holding that the defendants were and are the owners of said land.

6. The learned Court below erred in not holding that the plaintiffs had no possession of the lands claimed by them at the time the bill was filed.

7. The learned Court below erred in not holding that the defendants had actual and continuous possession of the lands in controversy since 1869, and at the time of suit brought.

8. The learned Court below erred in not holding that defendant's deeds were no cloud on the title of plaintiffs.

9. The learned Court below erred in not holding that the Court had no jurisdiction, and in not dismissing plaintiff's Bill for want of jurisdiction.

10. The learned Court below erred in not holding that the plaintiffs, by their Bill or proofs, show no ground for equitable jurisdiction, because by their Bill they averred that the defendants had taken possession of the land, or a part of it, and had sold some of the land and leased other portions, and still had possession, and that the defendants deeds were null and void on their faces.

11. The learned Court below erred in not holding that the common law action of ejectment is the only remedy to determine the question of title between the parties.

12. The learned Court below erred in holding that defendant's title had been obtained by fraud.

13. The learned Court erred in holding that the circumstances and conveyances which are the basis of defendant's title are marked by fraud upon the plaintiffs.

14. The learned Court erred in admitting the testimony of John B. Shreve, Andrew McElwaine, Granville P. Shreve, Patrick F. Duffy, Morton Marye, Robert Stiles, Joseph A. Wingfield, Martin E. Shreve, and Albert Owens.

15. The learned Court erred in decreeing that each and all of the following deeds be set aside as inoperative, fraudulent, null and void, and as clouds on the plaintiff's title, namely:

First.—A deed dated 28th of September, 1870, made by James Woodzell, Recorder of Webster County, in the State of West Virginia, of the first part, and Benjamin Rich and Thornton Conrow, of the second part, purporting to convey to the said parties of the second part a tract of land, described therein as "100,000 acres of land, described in the assessor's land book as lying and being on Gauley river and its tributaries, in the County of Webster."

Second.—A deed dated the 28th of September, 1870, made by the said James Woodzell, Recorder as aforesaid, of the first part, and Benjamin Rich, in part assignee of Albert Owens and G. P. Shreve, of the second part, purporting to convey to the said Benjamin Rich a tract of land, described therein as "a tract of fifty-eight thousand five hundred acres (58,000) of land, described in the assessor's land book as lying on Elk and Gauley rivers, in the County of Webster."

Third.—A deed dated September 28th, 1870, made by James Woodzell, Recorder as aforesaid, of the first part, and Benjamin Rich and Thornton Conrow, assignees of Albert Owen and G. P. Shreve, of the second part, purporting to to convey to the said parties of the second part a tract of land, described therein as "tract of land twelve thousand five hundred acres (12,500) of land, in the County of Webster."

Fourth.—A deed dated September 28th, 1870, made by the said James Woodzell, Recorder as aforesaid, of the first part, and Benjamin Rich and Thornton Conrow, assignee of Albert Owen of the second part, purporting to convey to the parties of the second part a tract of land, described therein as " a tract of one hundred and five thousand (105,000) acres of land in the County of Webster."

Fifth.—A deed dated October 3, 1872, made by the said James Woodzell, recorder as aforesaid, of the first part, and Benjamin Rich and Thornton Conrow, of the second part, purporting to convey to the said parties of the second part, a tract of land described therein as " a tract of one hundred thousand (100,000) acres of land, described in the assessor's land book as lying and being on Gauley, Williams, Cherry and Cranberry rivers, in the County of Webster "

Sixth.—A deed dated October 30, 1876, made by George W. Sawyers, clerk of the County Court of Webster County, in the State of West Virginia, of the first part, and Benjamin Rich, Thornton Conrow and Walter Wood, of the second part, purporting to convey to said parties of the second part, a tract of land described therein as " a tract of land of 65,734 acres of land, situate in the said county, on Gauley and Williams rivers.

Seventh.—A deed dated 3rd day of May, 1872, made by the said Benjamin Rich and wife, and Thornton Conrow and wife, of the first part, and Ferdinand F. Sharp, of the second part, purporting to convey to the said party of the second part " the one undivided third part or moiety of all their interest, right, title, or claim of, in, and to the following three tracts of land in the County of Webster, State of West Virginia, to wit :

First.—The said tract of one hundred thousand acres surveyed for William McClary, on the 23d day of April, 1795, as stated in said deed.

Second.—The said tract of one hundred and five thousand acres surveyed for James Welsh, in the year 1795, as stated in said deed.

Third.—The said tract of twelve thousand five hundred acres surveyed for George Messingbird, on the 10th day of May, 1795, as stated in said deed.

Eighth.—A deed dated May 15th, 1872, made by said Ferdinand F. Sharp and wife, of the first part, and Walter Wood, trustee, of the second part, purporting to convey to the said party of the second part, "all the certain one-sixth undivided title or interest" of the party of the first part, in and to the said three tracts of land which were conveyed to the said Ferdinand F. Sharp by the said Benjamin Rich and wife, and Thornton Conrow and wife, by their deed to him aforesaid.

Ninth.—A deed dated the 1st day of March, 1879, made by the said Thornton Conrow, of the first part, and the said Walter Wood, of the second part, purporting to convey to the said Walter Wood, the one undivided sixth part of said tract of one hundred thousand acres of land conveyed as hereinbefore stated by the Recorder of Webster County to the said Benjamin Rich and Thornton Conrow, and which, as stated in the deed of March 1st, 1879, was surveyed for William McClary, on the 23d of April, 1795, and the same tract conveyed to the said Rich, Conrow and Walter Wood, by the clerk of the County Court of Webster County, by the deed dated October 30, 1876, hereinbefore mentioned.

Tenth. A deed dated the 17th day of November, 1879; made by Joseph A. Thompson and James Woodzell, special commissioners, of the first part, and Walter Wood, trustee, of the second part, purporting to convey to the party of the second part the certain one-sixth undivided title or interest to the lands mentioned and conveyed by indenture of mortgage executed by the said Ferdinand F. Sharp, to the said Walter Wood, trustee as aforesaid, on the 15th day of May,

1872, and mentioned and described in said deed of November 17th, 1879, as follows: "The first of which contains one hundred thousand acres and is generally known as the McClary tract; the second of which contains one hundred and five thousand acres and is known as the Welch tract, the third and last contains twelve thousand five hundred acres and is known as the Messingbird tract."

Eleventh.—A deed dated the 13th day of December, 1875, made by Benjamin Rich and wife, of the first part, and Abram Waltman, of the second part, purporting to convey to the party of the second part an undivided one-eighth interest in the said tract of fifty-eight thousand five hundred acres convey to the said Benjamin Rich, by the recorder of Webster county, by the deed second (2) hereinbefore stated.

Twelfth.—A deed dated the 30th day, of October, 1879, made by the said Benjamin Rich and wife, of the first part, and D. S. Robinson, cashier, of the second part, purporting to convey to the party of the second part the one undivided third part of the said tract of one 100,000 acres of land surveyed for Col. William McClary, on the 23d day of April, 1795.

Brief.

To maintain a Bill in Equity *quia temet* the bill must show:

1. That the plaintiff has a perfect title to the land.

2. That the plaintiff has possession.

3. That the common law action of ejectment is inadequate.

4. That there is a cloud on the plaintiff's title.

The bill filed in this case by the plaintiffs below fails in all the necessary requirements and cannot be maintained.

I.

THE APPELLEES HAD NO TITLE AT THE TIME THEY FILED THEIR BILL—AUG. 8, 1881.

Their ancestor, A. T. Caperton, never obtained title because:

1. The deed from William Crammond to Astley fails to describe the land, and there is no proof that Astley died intestate leaving but one child, and that Sophia Kirkpatrick was that child.

2. The deed from Henry Crammond to John Williams, dated Dec. 14, 1842, is void, the title of Henry Crammond having been prior thereto forfeited.

3. The title of the said A. T. Caperton, such as it was, in 1875 was forfeited and sold for delinquent taxes and purchased by the state. The land vested absolutely in the state in October, 1875, subject only to the right of redemption within one year thereafter as provided by the Act, West Va., 1872–3, page 197, ch. 30, Sec. 33, which reads as follows:

"The previous owner of any real estate so sold and purchased by the state, his heirs or assigns, or any person having a right to charge it for a debt, may, within one year from the sale thereof, or if the same was heretofore sold, may, within one year from the passage of this act, *but not afterward*, redeem the same, etc."

The right to redeem was never exercised.

II.

THE CAPERTON TITLE WAS ALSO FORFEITED TO THE STATE FOR NON-ENTRY FOR TAXES FOR FIVE SUCCESSIVE YEARS.

It is admitted that in 1875, 1876, 1877, 1878, 1879, 1880 and 1881, the lands were not on the land books in the name of Caperton or any of his heirs and that no taxes were ever paid during that period.

The Act of 1868, Sec. 33 and 34, Ch. 31, reads as follows:

"It shall be the duty of any person owning any real estate to cause the same to be entered on the land books of the proper assessor, and charged with the state taxes thereon not charged to the owner for the year 1832, or any year thereafter, heretofore or hereafter not released, paid or in any manner discharged, which were and shall remain properly chargeable thereon.

When any person owning real estate has not, or shall not have for five successive years been charged on such books with such taxes on such real estate, the same, and all the title, right and interest of the owner, legal and equitable thereto, shall, without any proceeding, be absolutely forfeited and vested in this state.

III.

Appellees *ex parte* redemption decree, under which they claim that their forfeited title was redeemed and became vested in them, is dated *August* 11, 1881. (See record, page 16.)

The suit was begun *August* 8, 1881, so that even if appellees recovered title from the State, August 11, 1881, it was after suit brought.

But long prior to 1881, all titles which were vested in the State, passed under the constitution to appellants. In 1881, the State held no title to be redeemed.

The Act of 1873, Ch. 134, Sec. 13, on which the appellees redemption proceedings were founded, expressly saves appellants' rights in words following:

"Provided, that said payment shall in no way effect or impair the title to any portion of such land transferred to and vested in any person, as provided in section 3, Article 13, of the Constitution."

A title accruing after suit will not authorize a recovery.

Green vs. *Jordan*, 83 Ala., 220.

IV.

THE CAPERTON TITLE THUS VESTED IN THE STATE, IN OCTOBER, 1875, WAS HELD BY THE STATE UNTIL IT PASSED TO AND BECAME VESTED IN APPELLANTS, TWO YEARS BEFORE THIS SUIT WAS INSTITUTED.

Art. 13, sec. 3, of the State Constitution, reads as follows:

"All title to lands in this State, heretofore forfeited, or "treated as forfeited, waste or unappropriated, or escheated "to the State of Virginia, or this State, or purchased by "either of said States at sales made for non-payment of "taxes and became irredeemable, or hereafter forfeited or "treated as forfeited or escheated to this State or purchased "by it and became irredeemable, not redeemed, released, "or otherwise disposed of, vested and remaining in this "State, shall be and is hereby transferred to and vested in "any person (other than those for whose default the same "may have been forfeited or returned delinquent, their heirs "or devisees) for so much thereof as such person has, or "shall have had actual and continuous possession of under "color or claim of title for ten years, and who, or those "under whom he claims, should have paid the State taxes "thereon for any five years during such possession, or if "there be no such person (other than those for whose "default the same may have been forfeited or returned "delinquent, their heirs or devisees) for so much of said "land as such persons shall have title or claim to, regularly "devised, mediately or immediately from, or under a grant "from the Commonwealth of Virginia, or this State, not "forfeited, which but for the title forfeited would be valid, "and who, or those under whom he claims, has or shall

"same may have been forfeited or returned delinquent, "their heirs or devisees) for so much of said land as such "person shall have had claim to and actual continuous pos- "session of under color of title for any five successive years "after the year 1865, and have paid all State taxes charged "or chargeable thereon for said period."

Three classes of persons are named here who are entitled to receive the lands from the state and *Appellees are excluded by the Constitution being in default.*

The first-class requires actual continuous possession for ten years under claim or title, and payment of taxes for any five years thereof.

The second-class requires a title or claim derived under a grant from the Commonwealth of Virginia, or this State and payment of taxes for five successive years, after 1865, or from the date of the grant, if it issued since that year.

The third-class requires actual continues possession under claim or color of title, for any five successive years, after 1865, and payment of taxes for that time.

Appellants are within all three classes of the Constitution.

(A) APPELLANTS HAD A SUFFICIENT CLAIM AND COLOR OF TITLE UNDER THE CONSTITUTION.

On the 24th day of September, 1896, appellants purchased the lands at a sale for delinquent taxes.

As soon as the lands were surveyed by the county surveyor, who as the law required delivered the plots and courses to the Recorder, the Recorder executed and delivered the deeds to appellants upon payment of the purchase money and costs.

The lands were sold under the name of Banks, McClary and Welsh, the original patentees from the Commonwealth.

It is not necessary here to show that the appellants title is perfect or superior to the Caperton title.

Appellants title as contained in the four corners of their deed by the County Recorder, describing the land by metes and bounds duly recorded is a sufficient claim or color of title to bring them within the above classes of the constitution.

A tax deed is *prima facie* evidence of title.

Flanigan vs. *Grimmet*,
10 Grat. 426–32–5 (Va.)

A tax deed void on its face is color of title.

Hall vs. *Low*, 102 U. S., 461.
Core vs. *Fanpel*, 24 W. Va., 246.
Adams vs. *Alkire*, 20 W. Va., 480.
Jones vs. *Lemon*, 25 W. Va., 630.

(B) ALL TAXES WERE PAID BY APPELLANTS FOR THREE TIMES THE CONSTITUTIONAL PERIOD, TO WIT FROM, 1869.

The records of the County auditor, as to the McClary tract of 100,000 acres show.

"I further certify that it appears from the records of "this office that no part of the state taxes remains unpaid "on said tract of land from said, B. Rich, Walter Wood, "Thornton Conrow, or either of them for either of said "years, from 1870 to 1885, both included. Given under my "hand this 24th day of Sept., 1886. P. F. Duffy, Auditor."

And as to the Banks Tract of 58,500 acres,

"I further certify all the State taxes charged on said "tract of land assessed against the said B. Rich and others "have been paid, and no part thereof remains unpaid, given "under my hand this 24th day of September, 1886. P. F. "Duffy, Auditor." (Record, pages 450-1.)

And all taxes have been paid by appellants regularly each year since 1886.

(C) APPELLANTS HAD ACTUAL POSSESSION OF THE LAND AS REQUIRED BY THE FIRST AND THIRD CLASSES UNDER THE CONSTITUTION.

Rich, in 1869, took possession of the land. From 1870 James Woodzell, by his authority, leased the land to William Mullens, Jesse Hammons, Peter Hammons, Peter B. Barb, Moses N. Barb, and others, and put them in possession. (Record, pages 426-430.) They and their successors still occupy the land.

Robert C. Cldvenger, who was on the land, moved off upon notice from Rich, and subsequently returned to the land as a tenant under Rich. (Record, pages 421–425.)

William Mullens, Peter Hammons and Jesse Hammons were on the land as tenants of Rich from three to five years before Sawyer, as agent for Caperton, executed a lease to Mark Hammons in 1874. (Record, page 418.) Mark Hammons assigned th elease to Stillner, and Stillner gave it up long before this suit to Peter Hammons, a tenant of Mr. Rich, who still holds possession. (Record, page 421.)

Moses N. Barb succeeded his father as tenant under Rich, and still lives on the land. (Record, pages 434-435.)

Peter Barb, in 1870, took possession of the Banks tract under Rich, and his son, Napoleon Barb, succeeded him as tenant under Rich, and still holds possession. (Record, pages 435-437.)

Jesse Hammons, for thirteen years prior to 1886, held possession of the lands as tenant for Rich. (Record, page 438.)

A. H. Cogar held the land under Rich. (Record, page 444.)

The above is clearly a sufficient, actual and continuous possession of the lands, considering their nature and character.

Mr. Caperton had actual knowledge in 1869 that Mr. Rich had purchased the lands at a tax sale and had received his deed from the Recorder.

"I afterwards, about the time Mr. Rich got his deed informed Mr. Caperton of that fact." (Record, page 418.)

And Mr. Caperton also knew that Mr. Rich had taken possession of the lands at that time, yet he not only did not bring any action of ejectment, but did not pay any taxes on the lands after 1873 and allowed the land to be sold for delinquent taxes in 1875, and never redeemed it although he lived nearly one year thereafter.

The appellees do not bring a single witness to contradict appellants' testimony that they had actual and continuous possession of the land from 1869 down to the time of the depositions, 1886, a period of fifteen years.

Actual and continuous possession for the constitutional period is all that is necessary in respect to possession. The possession need not be adverse. If the possession must be adverse the constitutional provision could never take effect because the title under the Constitution vested in the State by forfeiture remains there until one of the three classes under the Constitution is qualified to take the title from the state. There can be no adverse possession as against the State, actual and continuous possession in the language of the Constitution.

Not only had the title of appellees been forfeited and sold for delinquent taxes and purchased for the State in 1875, but they and their ancestor again forfeited their title by non-entry on the land books from 1873 to 1878.

The leases made August 3, 1881, by appellees, through their agent, Mr. Craig (see Record, 410), are void. The leases are dated *six years after the title of the lessors was forfeited* to the state, *two years after* the title passed from the State to appellants and *eight days* before the

charge is not an entry or possession. Under such a void lease the lessee if he entered was merely a trespasser and he entered without title or color of title and could not acquire any title by his entry unknown to appellants except a squatter's right, which at most only extended to the extent of his improvement and could not extend to the limits of a tract of 40,000 acres, even if he had held possession for twenty years before suit instead of five days.

The Sawyer lease to Hammons in 1874 was then void because the tenants of Mr. Rich held possession of the land under a lease which had not then expired.

1. Possession by fraud is no possession.

Hardin vs. *Jones*, 86 Ill., 313.

2. Hammons occupied the land only a short time and then assigned to Stelner and Stelner gave up possession to Peter Hammons and Jessie Hammons, Mr. Rich's tenants (to avoid ejectment.) (Record, 419.)

3. The Caperton title and all his interest, legal and equitable, was forfeited and became absolutely vested in the State in 1875 by the tax sale and again by non-entry on the land books.

Appellees are expressly excluded from all three classes, under the Constitution. They could not prevent appellants from taking the benefit of the constitutional provisions by executing a lease without appellants' knowledge. *They could have prevented it by redeeming the lands and paying the taxes before it passed from the State to appellants. This they failed to do.*

The Intention of Appellees.

4. The appellees and their ancestor not only had no possession and no tenants during appellants' actual and continuous possession, but (a) they clearly showed their inten-

tions to abandon the land and their claim thereto, by paying no tax after 1873; (b) by allowing the land to be forfeited and sold for unpaid taxes and never redeemed, and (c) by non-entry of the land on the tax books and non-payment of taxes for eight years before suit brought.

The Intention of Appellees.

5. The actual and continuous possession of appellants from 1869, under their deed or claim and payment by them of all taxes each year to the present time has been proven.

The Intention of the State.

6. The State by various acts attempted to enforce the payment of taxes on lands which for many years had not been paid. Article 13, Sec. 3, of the Constitution was made to induce payment of taxes by some one, and to increase the the revenue of the State and at the same time to quiet titles. *Smith* vs. *Chapman*, 10 Gratt, 445, in return for the taxes paid for five years by any person in Class 1, 2, or 3, of the Constitution the land vested in the State by default of the former owner passes to the junior claimant and the former owner is expressly excluded.

7. It is also to be noted that *all titles* vested in the State pass to the junior claimant under the constitution. If, as appellees claim, the McCleery or McClary title vested in the State, in 1840, (which appellants do not admit) that title remained in the State from 1840 to 1879. It never was sold by the State. Therefore, in 1879, it passed with the Caperton title to appellants by the provisions of the Constitution, at the same time the Caperton title vested in the State passed to appellants under the Constitution.

The Second Class Under the Constitution.

8. Class 2 requires no possession by the junior claimants. A title derived by grant from the State and payment of taxes for five successive years from the date of the grant is sufficient.

It is not necessary that the deed or grant from the State to the junior claimant should be the superior title. If it were, no title would be vested in the State by the forfeiture of a worthless title claimed by another in default. There are only two claimants· Appellants in 1869 or 1870 received their deed from the State.

They paid their taxes for each successive year from 1869, the date of their grant from the State. The Caperton title became vested in the State in October, 1875, subject only to his right to redeem within one year and not thereafter.

In October, 1876, the title thus vested in the State was ready to pass to any of the three classes under the Constitution in the order named. The appellants claiming under a deed from the State, and having paid all taxes from 1869, the date of their deed, for each successive year (five years and over) up to and including 1876, were they not qualified in October, 1876, to receive under Class 2, the Caperton title then vested in the State? If not then qualified, they paid taxes each successive year from 1869 up to 1881 and from 1876 to 1881 the Caperton title remained in the State unless it passed to appellants. From 1873 to 1881 the Capertons paid no taxes. What period of five successive years is therefore to be taken from 1869 to 1881 in favor of appellants? The period from 1873 to 1879 is a period of five years, during which appellees paid no taxes and during which appellants paid all the taxes for the five successive years together with all taxes prior to 1873 from the date of their grant. Must appellants wait until 1879 or could they not take the Caperton title from the State in 1876, when it first became ripe.

As to Class 1 under the Constitution there can be no doubt as to the sufficiency of appellants' color of title, or as to the payment by them of all taxes since 1869. The appellants held actual and continuous possession since 1869. In 1879 the ten years possession was completed and they were ready to take under Class 1.

Class 3 Under Constitution.—Under Class 3 only five years actual possession is required. Under this class the appellants were ready to take the title of the land from the State as soon as it became vested in the State and the year allowed for redemption had expired, which was in October, 1876, at which time appellants' five years actual and continuous possession was completed, and they were doubly qualified under this third class by again fulfilling all the constitutional requirements for a second period o fiveyears before this suit was brought and before the expired redemption decree.

V.

Appellees had no Possession.

In their Bill, appellees aver "that within the past year the said defendants or some one of them pretended to sell, by executing contract to the defendant, Andrew Wayne, 300 acres, part of the said 58,500 acres, and placed the said Wayne and Thomas Myers in possession thereof, and the said Wayne is still in possession; that the said Rich and others leased to defendants, Asse Hammons and Adonijah Cogar, a certain part of said lands at the forks of Williams River, and the said Hammons and Cogar now lives in the land leased to him as aforesaid." (Record, p. 9.)

The answers of the appellants, and the proof show that they had actual and continuous possession since 1869. In their Bill, the appellees aver that appellants had actual possession at least one year before the bill was filed. Appellees do not aver that they had possession of the land at the time the Bill was filed, except as heirs of A. T. Caperton, who died in July, 1876, and whose land was forfeited and sold for delinquent taxes in October, 1875, and never redeemed. There could be no constructive possession in the appellees when they aver in their Bill that appellants had actual possession. Even the *ex parte* redemption decree is dated August 11, 1881, three days after this Bill was filed.

Plaintiff must be in possession when he files his Bill.

Lawrence vs. *Zimperman*, 37 Ark., 643.

If plaintiff is not in possession, equity has no jurisdiction.

Coolidge vs. *Forward*, 11 Or. 118.

Dyer vs. *Krackauer*, 14 Mo. App. 39.

Orton vs. *Smith*, 18 How. 263.

Killian vs. *Ebbinghaus*, 110 U. S. 574.

Fussel vs. *Gregg*, 113 U. S. 555.

United States vs. *Wilson*, 118 U. S. 86.

Newman vs. *Wescott*, 29 Fed. Rep. 49.

Cowman vs. *Colquhorin*, 60 Md. 1127.

Kilgannon vs. *Jenkinson*, 51 Mich. 246.

Gage vs. *Abbott*, 99 Ill. 366.

Oakley vs. *Hurlbut*, 100 Ill. 204.

McLean vs. *Presley*, 56 Ala. 211.

Plant vs. *Barclay*, id. 561.

Ellis vs. *Davis*, 109 U. S. 489.

It must be necessary to resort to extrinsic evidence to prove a deed invalid to constitute a cloud—*Id.*

A tax deed no cloud unless Statute authorizing the sale and conveyance has been strictiy complied with.

Eastman vs. *Thayer*, 60 N. H., 408.

The appellees aver in their bill (Record p. 7, par. 7) that the statute was not complied with.

VI.

As to the Cloud on Title.

The appellees aver in their Bill as follows:

"And the facts which render the said last mentioned deeds void, being matters of record and shown on the face of said deeds—and their grantors title being invalid on its face, their deeds are also invalid." Referring to appellants title (see Record, pp. 10 and 11.)

Where a deed is invalid on its face, Equity will not assume jurisdiction but will leave the party in possession to his defence.

Lehman vs. *Roberts*, 86 N. Y., 232.

Lehman vs. *Roberts*, S. C. Daly (N. Y.) 284.

There exists no such cloud upon the title which justifies the interference of a court of equity, where the proceedings are void upon their face, that is, the same record which must be introduced to establish the title claimed (as a cloud), will show that there is no title.

Hannewinkle vs. *Georgetown*, 15 Wallace, 548.

Equity will not entertain an action to remove a cloud on title which plaintiff in his Bill alleges is a deed void on its face.

Busrel vs. *Macy*, 85 N. C., 329.

VII.

As to Fraud Alleged in the Bill.

The appellees allege that appellants acquired the McClary title and the Welsh title by fraud. This is untrue and denied in toto by appellants (see Record, p. 301). As

the said titles were never owned by appellees they were not thereby defrauded, and no person can be heard excepting the person interested in the said titles. Appellees are not such persons. That appellants believed they had a good title is shown by the fact that they expended over $20,000 on the lands under their claim, which they never would have done if they did not think their title valid. Can any person who holds land under a claim of right be charged with fraud even if his title proves to be worthless? Could a person who seeks to obtain title to land by adverse possession be charged with fraud? *The appellees lost their title not by any act of appellants, but by their own acts and latches in not paying their taxes and allowing their title to be forfeited and sold and never redeemed.*

The testimony of appellees as to fraud is irrelevant and immaterial because:

1. The appellees' title was not lost thereby, but by their own acts.

2. Appellees had no interest in the McClary and Welsh titles purchased by appellants.

3. The evidence fails to show a single act on the part of appellants in reference to the purchase of said titles which was not fair and honest.

4. No conspiracy whatever on the part of appellees or any of them has been proven, and what was said or done by third parties not in their presence is not evidence against them.

5. The appellees charge of fraud amounts to this: That appellants fraudulently procured the McClary and Welsh titles which were worthless titles to be sold at a tax sale which was irregular and void on its face, and that they paid the purchase money and received a deed void on its face and paid to Shreve $2,000 for identifying the land and assisting them and paid all taxes on the land since 1869.

Even if appellees did all this it would only be a fraud on themselves. If their deed is void on its face they got nothing for their money thereby, and the title of appellees if superior could not be affected thereby except by their own acts in forfeiting it. But the proofs show that appellants were strangers and simply attended the tax sales and purchased lands sold for taxes, as they had a right to do.

VIII.

EJECTMENT IS AN ADEQUATE AND THE ONLY REMEDY.

Trial, according to the course of a Court of Chancery, is trial by a single Judge. But if there is any right to to which, more than all others, the people have clung with unrelaxing grasp, it is that of trial by jury. They brought it with them from the land of their fathers. In every Constitution which has been adopted, they have taken care to secure it against infringement, and put it beyond the power of the Executive, the Legislature or the Courts, to take it away from the individual. No power in our Government can take from the litigant the right to have his case tried by a jury, substantially in the mode and with the same effect as that which belonged to jury trials in similar cases, when the Constitution of 1776 was adopted."

North Penn. Coal Co. vs. *Snowden*, 6 Wright, 488, Pa.

OPINION BY JUSTICE STRONG.

Wherever a court of law affords an adequate remedy, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury.

Killain vs. *Ebbingham*, 110 U. S., 568.

Ejectment will lie to recover possession of the soil subject to either a public or private easement.

Tillmes vs. *Marsh*, 67 Penna, 507.

Ejectment lies against one claiming under a recorded tax deed of wild and unoccupied land.

Heinmiller vs. *Hatheway*, 60 Mich., 391.

Ejectment lies for unoccupied land against one claiming title alone.

Burchard vs. *Roberts*, 70 Wis., 111.

Ejectment Lies for Land Against One Not in Possession.

Act, West Va., March 3, 1877. Pamphlet Laws, 1877, p. 160.

"SEC. 5. If the premises be occupied, the occupant shall be named defendant in the declaration, and whether they be occupied or not, any person exercising acts of ownership, or *claiming* title thereto, or any interest therein, at the commencement of the action, may also be named as defendant in the declaration."

"SEC. 11. But if the defendant do not reside in the county where the action is brought, or cannot be found there in such service as may be made in any part of the State where he may reside or be found; and if he do not reside in the State, or cannot be found therein, an order of publication, as approved by law in other cases, may be awarded against him."

A Bill in Equity will not lie if it is in substance and effect an ejectment bill.

Killian vs. *Ebbinghams*, 110 U. S., 568.

The appellee's Bill is only a substitute for a *narr* in ejectment, because it avers:

(1.) A title in appellees, which is a matter of record.

(2.) Possession by appellants of the land, or some of it, and a claim of title to the whole.

(3.) Their prayer is that appellants' title be declared null and void, and that appellees be awarded a writ of possession.

It is apparent that a verdict and judgment thereon in ejectment would establish the title and the possession of the rightful owner. The respective titles are matters of record. There is no difficulty whatever about the proofs. If, as appellees, aver in their bill the records show that appellants' deed is void on its face the jury trial would be short and conclusive. No ground whatever is shown for equity jurisdiction. This bill should be dismissed because:

1. Ejectment is the proper and only remedy, the defendants having a right to a trial by jury.

2. The title claimed by appellees vested in appellants under Art. 13, Sec. 3, of the Constitution, prior to the time of the filing of this bill.

3. The decree in the *ex parte* redemption proceedings is dated August 11, 1881, three days after this bill was filed, and long after the Caperton title vested in appellants.

4. A Court of Equity will not decide a mere question between titles.

5. The bill does not aver and the proofs do not show that the appellees were in possession, at the time the bill was filed.

6. The bill avers actual possession, in appellants at the time the bill was filed of a part and a claim of title to the whole of the land.

7. The bill avers a record title in appellants void on its face, which is no cloud.

8. The appellees lost their title by their own acts and not by any act of appellants, against whom they have no equitable claims.

S. MORRIS WALN,
Of Counsel for Appellants.

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86

IN THE

SUPREME COURT

OF THE

UNITED STATES.

BENJAMIN RICH *et al., Defendants below and Appellants,*

vs.

TAMLIN BRAXTON, *et al., Plaintiffs below and Appellees.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF OF

JAMES H. FERGUSON,

Of Counsel for Plaintiffs and Appellees.

IN THE

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TAMLIN BRAXTON, *et al., Plaintiffs below and Appellees.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF OF COUNSEL FOR PLAINTIFFS.

STATEMENT.

The plaintiffs, Mary E. Braxton, Harietta C. Gordon, E. J. Caperton, Malinda C. Patton, Allen Caperton, Lelia C. Stiles and Ella Caperton, are the children and heirs at law of Allen T. Caperton, who died intestate in the month of June, 1876, seized and possessed of an estate in fee of all the lands in question in this suit, which are claimed by the said plaintiffs as the heirs at law of said Allen T. Caperton.

This suit was commenced in the circuit court of Webster county, West Virginia, on the 8th day of August, 1881, and was regularly matured for hearing in that court. Record, pp. 1, 2. At

the April term of that court, 1882, on the petition of the defendants, Edward Wood and Walter Wood, who were citizens of the State of Pennsylvania, the case was removed to the circuit court of the United States for the district of West Virginia, sitting at Parkersburg in said district, and was docketed in that court on the 12th day of June, 1882, to be there heard and determined. Record, pp. 1, 55, 57.

OBJECT OF THE SUIT.

The object of this suit was and is to set aside, vacate and annul certain tax deeds, and other deeds based upon said tax deeds, mentioned in the bills of the plaintiffs in this case, under which the defendants claim title to the lands of the plaintiffs in question in this suit, as clouds upon the title of the plaintiffs to their said lands.

FINAL DECREE.

This cause was, after a full investigation of all the facts and circumstances of the case, regularly heard, tried and determined upon its merits, by the court below, and on the 27th day of September, 1889, a final decree was made and entered therein, granting to the plaintiffs the relief prayed for in their bill and first and second amended and supplemental bills.

And the defendants have appealed from that decree to this court.

Record, pp. 454 to 458, inclusive.

Assignment and specifications of error complained of by the appellants, in the decree appealed from by them.

"1. The learned court below erred in holding that the plaintiffs had title to the land claimed at the time they filed their Bill."

"2. The learned court below erred in not holding that the plaintiffs had no title to the land claimed, at the time they filed their Bill."

"3. The learned court below erred in not holding that the title claimed by the plaintiffs had been forfeited absolutely to the State of West Virginia, beceuse it had been sold for the non payment of the taxes and purchased by the State, and was not redeemed at the time the Bill was filed."

"4. The learned Court below erred in not holding that the said

title claimed by the plaintiffs had passed to the defendants under Section 3, Article 13, of the Constitution of West Virginia before this suit was instituted."

"5. The learned Court below erred in not holding that the defendants were and are the owners of said land."

"6. The learned Court below erred in not holding that the plaintiffs had no possession of the lands at the time the Bill was filed."

"7. The learned Court below erred in not holding that the defendants had actual and continuous possession of the lands in controversy since 1869, and at the time of suit brought."

"8. The learned Court below erred in not holding that defendant's deeds were no clouds upon the title of plaintiffs."

"9. The learned Court below erred in not holding that the Court had no jurisdiction, and in not dismissing plaintiff's Bill for want of jurisdiction."

"10. The learned Court below erred in not holding that the plaintiff's by their Bill and Proofs showed no title; no ground for equitable jurisdiction because by their Bill they averred that the defendants had taken posession of the land or a part of it and had sold some of the land and leased other portions and still had possession, and that the defendants' deeds were null and void on their face."

"11. The learned Court below erred in not holding that the common law action of ejectment is the only remedy to determine the question of title between the parties."

"12. The learned Court erred in holding that defendants title had been obtained by fraud."

"13. The learned Court erred in holding that the circumstances and conveyances which are the basis of defendant's title are marked by any fraud upon the plaintiff's."

"14. The learned Court erred in admitting the testimony of John B. Shreve, Andrew McElvaine, Granville P. Shreve, Patrick F. Duffy, Morton Marye, Robert Stiles, Joseph A. Wingfield Martin E. Shreve, Albert Owens and James Gilliland."

"15. The learned Court erred in decreeing that each and all of the following deeds be set aside as inoperative, fraudulent, null and void, and as clouds on the plaintiffs' title, namely;" (Here follows a list of the deeds set aside by said decree.)

And now in support of said decree, I submit the following

POINTS OF ARGUMENT.

I.

The plaintiffs named in this suit, as the heirs at law of Allen T.

Caperton, deceased, were the owners in fee of the lands in question in this suit claimed by them herein, at the time they filed their bill and are still such owners.

This point covers the 1st, 2nd and 3rd specifications of error of the appellants.

The plaintiffs derived their title to their said lands from and under the following patents and deeds of bargain and sale, viz:

1. A patent granted to Robert Morris for 153,900 acres by the commonwealth of Virginia, on the 25th day of March, 1795, situate in the county of Greenbrier. Printed record, pp. 74 to 78.

2. A deed from Robert Morris and wife to William Crammond dated March 13, 1792. Record, pp. 79 to 88.

This deed conveys among other tracts, the said 153,900 acres, (record, pp. 83, 84, 85.)

3. A deed from William Crammond and wife to Thomas Astley, dated October 28, 1814. Record, pp. 89, 90.

This deed is written upon the back of the deed from Morris and wife to William Crammond, and conveys to Astley all the lands conveyed to him by them; the language of the deed being, "all and singular the tracts, pieces and parcels of lands and premises by the within written indenture granted and conveyed unto said William Crammond, situated, lying and being and butted and bounded and described as is within particularly mentioned."

4. A deed from Littleton Kirkpatrick and Sophia his wife late Sophia Astley, and the only child and heir-at-law of the late Thomas Astley, deceased, and Sarah Astley, widow of the said Thomas Astley, to Henry Crammond, dated December 10, 1840. Record pp. 91, 92.

This deed conveys the same land conveyed by Morris and wife to William Crammond and by him and his wife to Thomas Astley and is also written on said deed of Morris and wife, and in this connection, see agreement of counsel, record pp. 459, 460.

5. A deed from Henry Crammond to John Williams dated December 21, 1842, which conveyed to said John Williams the said tract of land of 153,900 acres. Record pp. 94 to 99.

6. A deed from John Williams and wife to Allen T. Caperton, dated February 21, 1850, whereby said Williams and wife conveyed to said Caperton 77,104 acres of the said Morris tract of 153,900 acres, bounded and described as therein mentioned. Record pp. 100 to 103.

7. A patent granted by the Commonwealth of Virginia to Abner Cloud, on March 10, 1790, for 5,000 acres then in the county of Harrison. Record p. 104.

This tract of land was forfeited to the Commonwealth of Virginia and reported as so forfeited by the commissioner of delinquent and forfeited lands to the circuit court of Nicholas county at the April term of said court, 1842, and was sold under the decree of that court as forfeited lands in two lots, Nos. 1 and 2 and purchased by the said John Williams, and the sale thereof was confirmed by said court. Record pp. 112, 113.

8. A deed from John Brown commissioner of delinquent and forfeited lands for the said county of Nicholas to John Williams, dated June 20, 1843, whereby he conveyed to said Williams the said 5,000 acres of land so purchased by him as aforesaid. Record, pp. 128, 129.

The county of Randolph, created in 1786, included this tract within its boundaries. And by the creation of the county of Nicholas in 1818, and the change of the lines of that county afterwards it was included in that county.

9. A deed from John Williams and wife to Allen T. Caperton, dated February 21, 1850. Record pp. 130 to 134.

This deed conveys to the said Allen T. Caperton, not only the tract of 5,000 acres granted as aforesaid to Abner Cloud, but also the following tracts, to-wit:

Lots No's 1, 2 and 9, of 1,000 acres each and No. 10 of 1,260 acres forfeited in the names of Robert Young and Benjamin Hide. No's 3, 4 and 6, of 1,000 acres each, forfeited in the name of Humphrey Macostin; No. 5, of 1,000 acres forfeited in the name of William Drummond; No's 7 and 8, of 1,000 acres each, forfeited in the name of John Ryburn; one tract of 1,703 forfeited in the name of John Staples. A tract of six hundred and ninety three acres, being lot No. 1, of a tract of 1,035 acres forfeited in the name of Robert Steel and others. A tract of 300 acres forfeited in the name of William F. Gains, and a tract of 400 acres joining the Robert Young and other lands described, granted by the Commonwealth of Virginia to said John Williams.

All of these lots and tracts named except the 400 acres were sold by the commissioner of delinquent and forfeited lands, under the orders and decrees of the said court, and purchased by the said John Williams. Record, pp. 105 to 126.

10. A tract of 2,738 acres granted by the Commonwealth of Virginia, to A. C. and D. B. Lane, on the 1st day of September, 1851, then, in the county of Randolph, but now in the county of Webster, which county was created in 1860, from Randolph, Nicholas and Braxton counties.

For this patent see record pp. 134-5.

11. A deed dated March 18, 1856, from Alexander C. Layne and wife to Douglas B. Layne, which conveyod the interest of the grantors in the said 2,738 acres of land to the grantee therein. Record pp. 135-36.

12. A deed dated April 12, 1859, whereby the said Douglas B. Layne and wife conveyed to the said Allen T. Caperton the whole of the said tract of 2,738 acres. Record p. 137.

13. A patent granted by the Commonwealth of Virginia to Austin Hollister for 9,330 acres of land in Randolph county, dated November first, 1855. Record pp. 138-39.

14. A patent granted by the Commonwealth of Virginia to the said Austin Hollister for 5,938 acres of land in Randolph county dated the first day of February, 1858. Record pp. 139-40; and,

15. A deed dated February 12, 1859, from Austin Hollister and wife to said Allen T. Caperton, whereby they conveyed to said Caperton both the said tracts of 9,330 acres, and 5,938 acres. Record pp. 140-41.

And under and by virtue of these patents and deeds, these plaintiffs, as the heirs at law of said Allen T. Caperton, deceased, had a clear and indefeasable title to all the lands claimed by them in this suit, when their bill herein was filed.

This suit was commenced, as before stated, on the 8th day of August, 1881, and the summons therein was made returnable to the first Monday in September next thereafter, and was returned to the clerk's office on the return day thereof, but partly executed. Chapter 125, Section 1, of the Code of West Virginia, provides as follows:

"1. In the Clerk's office of every Circuit Court, * * * rules shall be held on the first Monday in every month. * * * The rules may continue three days."

At the September rules, 1881, on the return day of the Summons, an order was entered awarding an *alias* summons returnable to the October rules, 1881, and filing the bill and exhibits of the plaintiffs, which was the earliest date at which the bill could be filed of record. Record p. 4.

Date of the redemption of the lands in question, by the plaintiffs.

The Abner Cloud, 5,000 acres, the Austin Hollister tracts of 9,330 acres, and 5,938 acres, and the A. C. and D. B. Lane 2,738 acres were all redeemed on the 5th day of August, 1881, three days *before* this suit was brought, Record pp. 14, 15.

And the title to these tracts was in the plaintiffs, not only when their bill was filed, but when this suit was brought.

The tract of 41,171½ acres was redeemed on the 11th day of August, 1881, three days after suit was brought, but something over 20 days before the plaintiff's bill was filed. This tract was the estimated residue of the 77,104 acres of the Robert Morris tract of 153,900 acres, conveyed to Allen T. Caperton by John Williams and wife as aforesaid. And as will appear further on, it is wholly immaterial when it was redeemed, so far as this suit is concerned.

II.

The plaintiffs were in actual possession of the lands in question claimed by them in this suit at the time their "Bill was filed." X

But in order that the Court may fully understand and apply the evidence of such possession by the plaintiffs, attention is first called to the maps in the record, showing the location of the lands in question as claimed by both parties, and how and to what extent they interfere with each other.

There are three of these maps in the record, all made by B. M. Yeager, the official surveyor in the case. The first is found between pages 217 and 218 of the record, and the other two, between pages 458 and 459 of the record. And the attention of the court is first called to the last of said maps next to page 459.

The solid brown color on this map shows all that part of the Robert Morris tract of 153,900 acres, and the Abner Cloud tract of 5,000 acres conveyed to Allen T. Caperton, by John Williams and wife, by their two deeds of February 21, 1850. And also the two tracts of land granted to Austin Holister and conveyed by him to said Caperton, as aforesaid, and the tract granted to A. C. and D. B. Layne, and conveyed to said Caperton as aforesaid.

The heavy blue lines on said maps running at one place through the brown color show the exterior boundary lines of the Robert Morris tract of 153.900 acres. And that part of the diagram col-

X As to the sufficiency of the allegations of the bill, of the title and possession of the appellees, See 1. Daniels Chy. Prac. Sec. 362, Q. Bonners Law Dictionary, 509, Simmons Creek Coal Co. v. Doran, 142, U.S. 417-443

ored brown, within said heavy blue lines, shows the boundaries of the 77,104 acres of said Morris tract, conveyed by John Williams and wife to Allen T. Caperton, as aforesaid.

I will call attention to this map again when I come to the claim of the appellants of the possession of these lands by them.

The other two maps show these same things, and more. They show the location and boundaries of all the other lands conveyed by John Williams and wife, as aforesaid to Allen T. Caperton, outside of the Morris 153,900 acres. And the diagram within the heavy blue lines on them marked 23,987, show the lands conveyed to others by Allen T. Caperton in his lifetime, whereby said 77,-104 acres was reduced to 41,171½ acres. The small diagrams within the light blue lines show the reservations described in the Morris patent of 153,900 acres, within the said 77,104 acres.

They also show the exterior boundary lines of the William McCreery patent of 100,000 acres as claimed by plaintiffs and defendants. And the map marked "Decree Map" shows in connection with the evidence, that where the claims differ the broken lines thereon are those claimed by the defendants, and the solid lines, those claimed by the plaintiffs. The only difference made by these conflicting claims is, that by the lines as claimed by the defendants, more of the lands of the plaintiffs are included within the bounds of the McCreery tract, than by the other.

But it makes no difference in the legal aspect of the case, which claim is the correct one.

And as the point at and around the place called the "three forks of William's River" marked on the decree map as "South Fork," "North Fork" and "Middle Fork," within the boundary lines of the 77,104 acres of the Morris tract, owned by Allen T. Caperton as well as within the exterior boundaries of the McCreery tract, figures largely in this case in connection with the questions of both title and possession, the special attention of the court is called to it.

It will be seen by the map first alluded to as well as by the other maps that a small corner of the McCreery tract, as shown on said first named map at the letter K, is outside of the Robert Morris tract. But it is further shown by the other maps, as well as by the evidence in the case, as appears hereafter, that it is within the lines of, and connected with, the other lands of the plaintiffs conveyed to Allen T. Caperton by the second above named deed of John Williams and wife, of February, 21, 1850.

Plaintiffs' evidence of possession of their said lands when their bill was filed.

DEPOSITION OF JAMES S. CRAIG.

The evidence of this witness is found in the record, on pages 403 to 411.

He was well acquainted with Allen T. Caperton in his lifetime, and with all the lands owned by him. He took charge of these lands, as the agent of the plaintiffs in Nicholas county on the 1st day of September, 1877, and of those in Webster, about November 27, 1880. He describes these Caperton lands as follows:

"Said lands consist of a number of contiguous tracts (shown on the map of Surveyor B. M. Yeager, filed with this deposition,) included within and bounded by the small red lines, beginning in Nicholas with the block of surveys numbered from 1 to 10," &c., and he proceeds with a description of all the tracts owned by Allen T. Caperton in his lifetime, and claimed by the plaintiffs in this suit. Record, pp. 404, 405.

The map to which the witness refers is the one, a copy of which is found at page 218 of the record.

It is badly and to some extent incorrectly printed, and we can better understand how and where these tracts connect with the lands in question, by what the witness says, than by the map, as printed.

The John Staples tract of 1,703 acres is shown on said map, by the *red* figures 1,703, nearly obliterated by the black figures 703 and lies on both sides of Cherry river, covering that part of the McCreery tract at the corner shown by black letters B. B., outside of the Morris tract, but inside of the Staples tract. He describes their point of connection, thus: "Where lots No. 8, 9, 10, the 400 acre grant, and the tract marked '1703' all corner together. Record, p, 407.

He found Samuel Hinkel in possession of a part of said lands, claiming under Allen T. Caperton and the plaintiffs.

On the 3d day of August, 1881, he says he "made a formal lease of 9,330 acres (less 19 acres sold to David Baughman) toDavid Hammons. This lease is in the record on page 410 and shows that the tract so leased was the 9,330 acres (less the 19 acres) granted by the Commonwealth of Virginia to Austin Hollister. But *Daniel* instead of David Hammons, was the lessee.

And on the same day he says, that "as agent for A. T. Caperton's heirs," he leased 11,459 acres, part of the 77,104 acres, to William Mullins. This lease is in the record, on page 411.

And about March 1879, he says, he gave to Wilber Baldwin, at his request, the privilege of living on Caperton's land as the "tenant of the Caperton heirs," and that he occupied the land as such tenant "until something over a year ago." (He gave his deposition, April 30, 1885.)

And he proves the very important fact that as early as the Spring of 1865, he found Solomon Taylor living on the lands of Allen T. Caperton as his tenant, and says: "He must have been there for a number of years, at least, before 1865, for his cabin and buildings looked old and his improvement was large and the fields near the house moderately clear of chestnut stumps," &c. Record p. 407.

He says further that "Taylor's improvement, as near as he could locate it, was represented by the black square made by him on Yeager's map, in Nicholas county, where lots No. 8, 9, 10, the 400 acre grant, and the tract marked '1,703' all corner together." But the black square he speaks of is not found on said map as printed. The description he gives however is sufficient to identify the place.

And finally, he says: "It is well known to me that the late Samuel Thompson, of Greenbrier county, acted as the agent of A. T. Caperton for these lands both in Nicholas and Webster counties for almost a score of years; and that he spent considerable time on them in locating, surveying, and supervising openly with his personal attention as such agent. This is all that I can now recall concerning the possessions."

DEPOSITION OF GEORGE M. SAWYER.

On the 8th day of July, 1874, this witness, *acting* as the agent of Allen T. Caperton, though without his knowledge at the time, executed a lease in writing to Mark Hammons for a tract and parcel of land owned by said Caperton, at and around the forks of Williams river—part of the 77,104 acres of the Robert Morris tract, conveyed to Caperton by John Williams and wife. Record pp. 313, 314.

This lease was approved in writing by said A. T. Caperton July 20, 1874.

The execution of this lease is also proved by Bernard Mollohan. Record p. 319.

The following is a copy of said lease, and of the endorsements thereon:

"This day I, George M. Sawyer, of the county of Webster, acting as agent for Allen T. Caperton, of Monroe county, all of the State of West Virginia, has for the sum of one dollar in hand paid and other valuable considerations, leased and rented for the said Caperton to Mark Hammons all that certain tract or parcel of land owned by the said Caperton at and around the forks of Williams river, being the same land that William Mullins formerly resided on, under the said Caperton, for the term of three years from this date; and the said Mark Hammons is to return the possession of said lands peaceably and quiet- to said Caperton whenever called on.

Given under my hands this 8th day of July, 1874.

"A. T. CAPERTON,
"By GEORGE M. SAWYER, *Agt.*
his
"MARK X HAMMONS.
mark.

Witness:
"B. MOLLAHIN.
"J. W. WOLVERTON."

ENDORSEMENTS.

"This lease is made in conformity with my suggestion and direction, and I hereby approve the same. 20 July, 1874.

"A. T. CAPERTON.

"I, Mark Hammons, do hereby assign the within lease to M. J. Stiltner.

"Witness my hand this 14th day of May, 1875.

MARK HAMMONS.

"I, M. J. Stiltner, do assign one-half the within lease to R. C. Clevenger this Sept. 21, 1876."

DEPOSITION OF R. C. CLEVINGER.

This witness was acquainted with Mark Hammons and M. J. Stiltner. In 1876, Stiltner, he says, "lived at the forks of Williams river, on the Allen Caperton lease that he got from Mark Hammons."

And in 1876, he says that he "lived on the Allen T. Caperton

lease got from Mark Hammons by M. J. Stiltner, at the forks of Williams river."

Again he says: "On the 21st of September, 1876, M. J. Stiltner assigned to me one-half of the A. T. Caperton lease, that he bought from Mark Hammons. I had been living on the lease from December before with the understanding that I was to have one-half of it. The paper here shown to me in the form of a lease from A. T. Caperton by George M. Sawyers, his agent, to Mark Hammons, is the contract of lease, part of which was assigned to me by M. J. Stiltner, which paper, marked 'A.' I desire to have filed as part of my deposition."

He lived on this leased land from December, 1875, to March, 1877, and then left it in the care of M. J. Stiltner, who sold the lease to Peter Hammons, and Peter Hammons took possession of it.

He further testifies as follows:

"Peter Hammons was in possession of it a year or so. He then let Jesse Hammons have possession of the land. I think Jesse Hammons traded him another possession or lease for the A. T. Caperton lease, and then Jesse Hammonds moved on the land. Then Jesse Hammonds sold the possession of the same land to John Lee, and then John Lee moved on it."

The court will observe that the land to which all the evidence relates, was a part of the 77,104 acres of the Robert Morris tract of 153,900 acres, conveyed by John Williams and wife on February 21, 1850, to Allen Caperton.

DEPOSITION OF M. J. STILTNER. RECORD, PP. 400, 401.

And the deposition of Stiltner, relates to these same lands, and he corroborates the evidence of the witness Clevinger; Mark Hammons, he says, assigned him his lease from Caperton in consideration of $65.00, and removed from the premises in August, 1875, at which time he (Stiltner,) entered into full possession of them. On September 21, 1876, he assigned one half of said lease to R. C. Clevinger, and Clevinger removed to, and remained upon said leased premises until the Spring of 1877, when he left them, leaving Stiltner still in possession, with authority to dispose of his half of the leased premises. And Stiltner acting for himself and Clevinger sold and transferred the whole of the leased premises to Peter Hammond, who took possession of them about April, 1877,

when the title to the land was in the State of West Virginia, and only four years and, about, three months before this suit was brought. And, therefore, any possession of this land obtained or taken by Jesse Hammons, or any other person, after this date, is not to be considered in this case, as it can be of no sort of benefit to the Appellants.

And under the lease of Allen T. Caperton to Mark Hammons of July 8, 1874, said Hammons, M. J. Stiltner, R. C. Clevinger, and Peter Hammons, were all, in *law*, as well as in *fact*, the tenants of Allen T. Caperton.

Hammons assigned the lease to M. J. Stiltner on May 14, 1875, and Stiltner assigned the one half of it to R. Clevinger, on Sept. 21, 1876, three days before the title to the leased premises, and other lands of the plaintiffs vested in the State of West Virginia, by forfeiture. And at the time of this forfeiture, the plaintiffs were in the *actual* possession of their lands so forfeited, by at least, three of their tenants, Samuel Hinkle, M. J. Stiltner and R. C. Clevinger. And, as the evidence of James S. Craig and Samuel Hinkle clearly proves, they were never divested of their said possession by the State, but were permitted by the State authorities to remain in the undisturbed possession of their said lands, until they redeemed them from said forfeiture. And, I submit, therefore, that Peter Hammons was also a tenant of the plaintiffs of said leased lands, coming into the possession of them as he did, under the said lease from Allen T. Caperton to Mark Hammons. And he can not dispute the title of his landlords.

EVIDENCE OF SAMUEL HINKEL.

This witness gave two depositions, the first, taken by the plaintiffs. Record pp. 402–3.

The second, taken by the defendants. Record pp. 422–3.

His first deposition was taken April 28, 1885. He gives his residence in Glade District, Webster County. On May 1st, 1868, he entered into the possession of the lands of Allen T. Caperton, at the place whereon he still resided, under a contract with said Caperton, both as his tenant and *overseer* of Caperton's lands. And of which lands Caperton already had possession by his tenant, Solomon Taylor. And this happens to be the same year that John B. Shreve, who figures largely in this case, procured

the tract$ of land in question. ~~boundary lines of which, as claimed by the appellants, include the lands of said Caperton where the witness resided,~~ to be entered on the land books of Webster County, as hereinafter mentioned.

Hinkel says that Caperton put him in possession of the whole of the land, and told him "to see that there was no destruction of timber, and to keep tresspassers off of it," and that he did so to the extent stated by him. He said, further, that he had lived on the said lands of Caperton from 1868 to April, 1885, as the tenant of Allen T. Caperton, while living, and of his heirs at law since his death.

His second deposition, pages 422–3 of the record, was taken by the defendants, and in answer to questions propounded by them, he testifies, in substance as follows:

That the lands of Caperton, on which he lived in April, 1885, were in Glade District, on Gauley River, just above the mouth of a branch, on the left hand side of the river, "going up," and about three miles above the mouth of Stroud's Creek.

By reference to the "Decree Map" it appears that there are but four branches or creeks running into Gauley River, on the left hand side, going up, at the place in question, and that all of them are on the lands of the plaintiffs, in Webster County, and within the 77,104 acres of the Robert Morris 153,900 acres conveyed by John Williams and wife to Allen T. Caperton, as aforesaid. The name of but one of these branches is given, and that is not Stroud's Creek. But the witness lived on Caperton's said land, no matter which of them was Stroud's Creek.

The counsel of the defendants took special pains to prove that the place occupied by Hinkel was not within the boundary lines of the land claimed by the defendants, as if that *fact* when proved, in any way, availed the defendants, in view of the other, to them, *fatal fact*, that the lands at that point, both inside and outside of the lands claimed by the defendants, were the property of Allen T. Caperton, in his lifetime, and were since his death the property of the plaintiffs in this suit, as will fully appear hereafter.

It appears, by this deposition, that Hinkel had some sort of an agreement with Caperton for a purchase of some of said land, which does not appear to have ever been executed. And he repeats the fact that he took possession of and occupied the land, as the land of Allen T. Caperton, and not as the purchaser of any part of it.

And as all these tracts, lots and parcels of land, owned by Allen T. Caperton in his lifetime, lay contiguous to, and adjoined each other, and were, therefore, for the purposes of possession, but one tract in law, the actual possession of a part of them by Caperton, was in law the possession of the whole of them.

Overton's Heirs v. *Davidson*, 1 Gratton Va. 229-30.

Simmons Creek Coal Co. v. *Doran*, 142, U. S. 417, 443.

The evidence in the case shows that at the time the said lands were forfeited to the State of West Virginia, the plaintiffs, by their tenants. Samuel Hinkel, M. J. Stiltner and R. C. Clevinger, were in the actual possession of all of their said lands.

The evidence further shows that the said plaintiffs, notwithstanding the said forfeiture, remained in the possession and control of their said lands, without any interruption or objection by the authorities of the State from the 24th day of September 1876 to the time they redeemed said lands from said forfeiture in the same manner and to the same extent, precisely, as if no forfeiture thereof had ever occurred. And, therefore, I do most seriously contend, and with great confidence submit, that the plaintiffs *were* in the *actual* possession of the whole of their said lands when they filed their bill in this suit.

III.

The Appellants have no title, legal or equitable, to the lands, or any part of them, claimed by them in this suit.

Under this point I will consider the appellants 5th, 12th and 13th specifications of error, and I propose to show that the defendant Benjamin Rich, and his associates in the purchase and in the procurement of the pretended deeds under which the appellants claim title to the lands in question in this suit, and in their proceedings and conduct afterwards, were guilty of the most gross and outrageous frauds, and that all of their pretended deeds so obtained, are inoperative, fraudulent, null and void. And I begin with the proceedings of the original conspirator in these fraudulent proceedings.

In the year 1866, there lived in the county of Upshur, West Virginia, an old man of the name of John B. Shreve, born in that vicinity toward the end of the last century, and brought up in

that section of the Commonwealth of Virginia, and, as will fully appear, he was old in sin, as well as in years. He was a practical surveyor, and had possessed himself unlawfully, of the public record book of the early surveys made in Randolph county for persons desiring to obtain patents for lands belonging to that Commonwealth. These lands were, in many cases, surveyed in tracts of from 100,000 to 500,000 acres, and in others in smaller quantities. The dates, boundary lines, and maps of said surveys were all shown in said record book but it did not show whether patents had issued upon such surveys or not.

And in many instances, as was the case with the Welch and Messingbird surveys, in question in this case, no patents were issued upon the surveys so made. And in numerous other cases where patents were issued upon said surveys, the lands were afterwards abandoned by the owners and they became forfeited for the failure to pay the taxes thereon, and were afterwards lost sight of.

The County of Webster was created in the winter of 1860, from territory taken from the counties of Nicholas, Randolph and Braxton, and the civil war coming on soon after, no land books for the County of Webster were ever filed in the proper office in Virginia. Record, p. 374.

And by reason of the war, no land books for the said County of Webster were made up and filed in the proper office in West Virginia, until 1866. Record, p. 364.

And none of the lands claimed by the appellants in this suit, were entered on the land books of Webster county, of either, 1866 or 1867. And in this failure Shreve saw his opportunity for what follows. He had been acquainted in early life with the surveyors of Randolph county, who made most of the surveys recorded in the book referred to, and had been, or professed to have been shown by them, the lines and corners of many of these old surveys. And he determined to utilize this book and the knowledge so possessed by him, to his pecuniary advantage. And he entered vigorously upon the execution of the fraud and swindle his prolific brain had formulated.

A scheme "conceived in sin, and born in iniquity." His scheme was, by fair means or *foul*, to induce the Assessor of Webster county, among others, to enter a large number of the

old and abandoned surveys, appearing in the said record book of surveys in his possession, on the land books of Webster county, for the year 1868, and charge them thereon with taxes for 1868, only, which taxes, he *knew* would not be paid, and that the lands so entered and charged would, therefore, be returned delinquent, he also *knew*, that a sale of these lands would necessarily follow for the payment of these taxes, and to insure that result he determined to have the lands all entered and charged with taxes in the names of the persons in whose names they were surveyed in 1795, and before. And they were so returned and sold, and as he had planed, were bought by his co-conspirators.

He commenced operations as early as 1866, by causing the report to be circulated in Pennsylvania, Maryland, and the District of Columbia that there would be a large sale of valuable lands in Webster and other counties in West Virginia, in the near future for the taxes due and unpaid thereon, and that persons who might wish to become purchasers at such sales, could obtain valuable information in regard to the lands to be sold by applying to him.

And this report brought James Gilleland a resident of Washington City, and a gentleman from Pennsylvania, to the residence of Shreve in Upshur County, West Virginia, for information in regard to a tract of 80,000 acres of land, in Webster county. And Shreve availed himself to the utmost, of this visit, to forward his nefarious scheme. He showed these gentlemen the book of surveys alluded to, and told them the taxes had not been paid on the large surveys pointed out by him, and that "they could be put on the tax lists and sold for the taxes on them," &c. And the result of this was, that in 1867, Gilleland, with five gentlemen from Pennsylvania, visited Shreve again at his home, in reference to these contemplated tax sales.

Shreve, at this time, renewed the conversation about these old tracts of land, which he said could be surveyed and put on the tax books and sold for the taxes on them, and that titles to them "could be obtained in that way." And these gentlemen agreed with Shreve that "if they could get the title in that way," they would be purchasers at the sales of said lands and would pay him for his services in the matter.

Record pp. 324, 325, (Deposition of Gilleland.)

And now, having found persons willing to buy Shreve was ready to look after the assessor.

And he approached him diplomatically. He did not go to him as an *honest* man who had the *right* under the law, to enter lands on his land books for taxation. But it satisfactorily appears by the paper he sent to the assessor containing the list of tracts of land he desired to have entered, to which attention will presently be called, that he sent one of his sons in advance to negotiate with the assessor the terms upon which he would violate the law of the State as well as his oath of office, and enter such tracts of land as Shreve might desire to have entered in the way and manner Shreve desired it to be done. And the mission of the son was successful, as appears by the following paper written by Shreve.

"BUCKHANNON, *May* 18, 1868.

The assessor of the county of Webster, in West Virginia, will put on the commissioner's books the following tracts of land, as follows:

One tract in the name of Joseph Patterson, containing one hundred eighty thousand acres, 187,000 acres.

One tract in the name of William McClary, containing one hundred thousand acres, 100,000.

Fifty-three tracts in the name of Henry Banks, containing fifty-eight thousand five hundred acres, 58,500 acres.

Three tracts in the name of Joseph Say, and Zebulon Curtis, each containing *containing* twenty-five thousand acres, each tract 25,000 acres.

One tract in the name of Robert Patten, containing fifty thousand acres, 50,000 acres.

One tract in the name of Benjamin Rider, containing five thousand one hundred and thirty-two 5,132, acres.

One tract in the name of Benjamin Rider, containing five thousand eight hundred and sixty-eight, 5,868 acres.

One tract in the name of William C. Cooper, containing two thousand acres, 2,000.

One tract in the name of Elizabeth Burnvell, containing seven hundred and fifty, 750 acres.

One tract in the name of George Messinburg, containing 12,500 acres.

One tracts in the name of James Ewing, containing 1,000 acres.

One tract in the name of William Chambers, containing, 3,917 acres. Endorsed on the back: "To the assessor of Webster county."

The following land lays as follows that *was* handed to you by my son:

Joseph Patterson, 187,000 acres; lays on the head of Hally and including the left-hand fork of Elk until it strikes Upshur county, Hally township.

The William McClary 100,000 acres; lays on Gauly and Williams rivers, at the lower end of the county, said township.

The Henry Banks survey of 58,500 acres, laid off in 53 lots. The most lies east of Addison, on Elk & Gauly, Fork Lick township.

Three tracts of Joseph Say & Zebulon Curtis of 25,000 acres each; lays northeast of Addison, on Gauly and Williams river, Fork Lick township.

One tract of Robert Patton of 50,000 acres; lays on the head of Hally, Hally township.

One tract of Benjamin Rider, 5,132 acres on the head of Hally, Hally township.

Do. to said Rider, 5,862 acres on the head of Hally, Hally township.

George Messingburg, 12,500 acres on Gauly at the upper end of the county, Fork Lick township.

James Ewing, 1,000 acres on Gauly, at the upper end of the county, Fork Lick township.

William C. Cooper 2,000 acres, south of Addison 4 miles, Fork Lick township. Lives in Salem, New Jersey.

Elizabeth Burnvell, 750 acres on Laurel Creek, at Goffi; lives in Brooklyn, New York, Glade township.

"Please place the following tracts on the books, and them men will call on you and settle your fees liberally, as my son told you; them lands in Webster county is covered sometimes three deep, if they owners choose to put them on the books at five cents per acre it will amount to thousands of dollars to the county as well as the State; as my son told you, you will be attended to.

Yours truly,

J. B. SHREVE."

"P. S. Leave with Mr. Sawyer what you put them down at, so that I can write to those men what it is, &c.

"The rest lives in Pennsylvania.

"P. S.—Also put down on the books one tract in the name of James Welch, containing 105,000 acres, in Fork Lick township.

Also one tract in the name of William Bridges, containing 30,000 acres, in Fork Lick township.

Alexander Wolcott, 70,000 acres; New York.

Vanderpool 27,000 acres; New York."

The part of the foregoing paper beginning with the word "Please," and to which Shreve's name is signed, is not correctly printed in the record, and having a certified copy of it, I give it as filed with Hamrick's deposition.

It is claimed by the appellants that the tract of 100,000 acres "in the name of William McClary" mentioned in the foregoing list was intended for, and is, the tract of 100,000 acres conveyed to William McCreery, by the patent bearing date January 21, 1796. Record p. 174. But their claim if true, makes it bad for them.

On December 3, 1863, the Legislature of West Virginia passed "an Act to provide for the Assessment of Taxes."

And Section 36 of that Act, among other things, provided that "All real estate * * * belonging * * * exclusively to the State * * * shall be exempt from taxation."

The title to the 105,000 acres surveyed for James Welch, and to the 12,500 acres surveyed for George Messingbird, and to the 100,000 acres granted to William McCreery, was at the date of
paper sent by Shreve to the Assessor of Webster county,
tate of West Virginia, as will hereafter fully appear, and
of either of said tracts of land, could lawfully be entered
rged with taxes on the land books of Webster county.
ears from the evidence in this case that no patents were
ither to Welch or Messingbird, or to any one else, upon
eys of said lands made for them, as shown by the said
ook in the possession of Shreve. Record p. 372.
IcCreery tract of 100,000 acres was returned delinquent
las county for the taxes assessed upon it for the years
1850 inclusive, amounting to $297.50, and sold in the
) for the payment of said taxes, and no person present,
the said sum of money to be satisfied from the sale of
real estate, the Sheriff of said county purchased the said
the Commonwealth of Virginia, and the same was never
l from said Commonwealth. Record pp. 373, 374.
t in 1863, the title to the Welch 105,000 acres, and the
ird 12,500 acres was in the said Commonwealth as waste
and unappropriated lands, and the title to the McCreery 100,000 acres was in said Commonwealth by purchase. *

The Code of Virginia of 1849 was in force in 1850, when this sale and purchase of the McCreery tract was made.

And Chapter 37, Sections 24, 25 and 26 of that Code, provided as follows:

"24. When any real estate is offered for sale as aforesaid, by the sheriff or collector, and no person present bids the amount to

* Except the parts of said three tracts, patented to A. G. and D. B. Layne, and to Austin Hollester, as aforesaid. See page 7 of this brief

be satisfied from the sale thereof, the sheriff or collector shall purchase the same on behalf of the commonwealth for the taxes thereon, and the interest on the same, and its proportion of the expense of advertising. A list of the real estate so purchased by the commonwealth, shall be made out by the sheriff or collector. After it shall have been verified by him on oath, the court of his county or corporation shall direct its clerk to make out a copy thereof, and deliver it to the commissioner of the revenue, and shall cause the original list to be certified to the first auditor.

"25. The first auditor shall cause all the lists received in his office, under the preceding section to be recorded in a well bound book; and all the real estate mentioned in such lists, shall without any deed for the purpose, stand vested in the commonwealth.

"26. The previous owner of any real estate so purchased for the Commonwealth, his heirs or assigns, or any person having a right to charge such real estate for a debt, may, until a further sale thereof, as hereinafter mentioned, redeem the same by obtaining from the first auditor such certificate, and paying such fee therefor as is mentioned in the first section, and by paying into the treasury the amount for which such real estate was so purchased, with such additional sums as would have accrued for taxes thereon, if the same had not been purchased for the Commonwealth, and interest at the rate of ten per centum per annum, on the former amount, from the date of purchase, and on the additional sums, from the fifteenth of December in the year in which the same would have so accrued. When real estate so purchased is so redeemed, the first auditor shall certify the fact to the proper commissioner of the revenue."

And without the certificate provided for in this 26th Section, this McCreery tract could not lawfully be entered and charged with taxes on the land books of Webster county, or of any other county.

But this was not the only difficulty in the way of the assessor in entering this tract on his land books in 1868. x

West Virginia became a State of this Union under the Act of Congress passed for the purpose, on the 20th day of June, 1863, and Article IX, Sections 3, 4, and 5, of her Constitution provides as follows:

"3. The legislature shall provide for the sale of all lands in this State, heretofore forfeited to the State of Virginia for the non-payment of the taxes charged thereon for the year one thousand eight hundred and thirty one, or for any year previous thereto, or for the failure of the former owners to have the same entered on the land books of the proper county and charged with the taxes due thereon for the said or any year previous thereto, under the

x See page 70 of this brief, Note "F" for an Act of the Restored Government of Virginia"

laws of the State of Virginia, and also of all waste and unappropriated lands, by proceedings in the circuit courts of the county where such lands are situated.

"4. All lands within this State, returned delinquent for nonpayment of taxes to the State of Virginia since the year one thousand eight hundred and thirty one, when the taxes, exclusive of damages, do not exceed twenty dollars; and all lands forfeited for the failure of the owners to have the same entered on the land books of the proper county, and charged with the taxes chargeable thereon since the year one thousand eight hundred and thirty one, where the tract does not contain more than one thousand acres, are hereby released and exonerated from forfeiture, and from the delinquent taxes and damages charged thereon.

"5. All lands in this State heretofore vested in the State of Virginia by forfeiture, or by purchase at the sheriff's sales for delinquent taxes, and not released or exonerated by the laws thereof, or by the operation of the preceding section, may be redeemed by the former owners, by payment to this State of the amount of taxes and damages due thereon at the time of such redemption, within five years from the day this Constitution goes into operation; and all such lands not so released, exonerated or redeemed, shall be treated as forfeited, and proceeded against and sold as provided in the third section of this article."

The five years given by section 5 to the former owners of all such lands in which to redeem them "by the payment of the taxes and damages due thereon," expired on the 20th day of June, 1868, and the said tract of 100,000 acres not having been so redeemed, the title thereto so far as vested in said Commonwealth, become vested absolutely in the State of West Virginia, and said tract could not lawfully be entered and charged with taxes on the land books of any county, either in the name of the state or of *any* person, not even the former owner.

And Article XI, Section 8, of that Constitution, among other things, provided as follows:

"Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia, when this constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature."

And under this provision of that Constitution Sections 24, 25, and 26, of the Code of Virginia, of 1849, became the law of West Virginia.

And on the 2d day of March, 1865, the legislature of West Virginia passed an act to give full effect to the provisions of the

constitution of the State before referred to, the 2d and 3d sections of which act provided as follows:

"Sec. 2. All lands in this State heretofore vested in the State of Virginia by forfeiture, or by purchase at the sheriff's sales for delinquent taxes and not released or exonerated by the laws thereof, or by the operation of the fourth section of the ninth article of the constitution of this State, may be redeemed by the former owners, by payment into the treasury of this State, upon the certificate of the Auditor of the amount of taxes and damages due thereon at the time of such redemption, on or before the twentieth day of June, eighteen hundred and sixty-eight."

"Sec. 3. All waste and unappropriated lands within the State, and all lands in this State heretofore vested in the State of Virginia by forfeiture or by purchase at the Sheriff's sales for delinquent taxes, not released and exonerated, or redeemed in the manner prescribed in the second section of this act, shall be sold for the benefit of the school fund, in the manner hereinafter directed."

The Act of the Legislature of West Virginia passed December 3, 1863, "to provide for the Assessment of Taxes," already referred to, plainly prescribed the duties of the Assessor as to the entry of lands for taxation on his land books. And a copy of this act was furnished to every Assessor to guide him in the discharge of his duties. And section 28 of that Act provided as follows:

"28. When the assessor shall ascertain that there is any land in his district to which any person has title by patent or otherwise, which has not before been entered on his land book, or after being entered has for any cause been omitted for one or more years, he shall make entry thereof and of the name of the owner; and if there be no assessment of the same, shall proceed to make such assessment to the best of his judgment, by reference to the assessed value of contiguous lands similarly situated; and shall charge on the land which he so enters, where the quantity contained in the tract exceeds one thousand acres, taxes at the rate imposed by law for each year in which the land was not before entered in such book, from the year eighteen hundred and thirty two, inclusive, if the patent issued before that time, and if it did not, then from the date of the patent or other title, together with lawful interest on each year's tax. Where the non-entry, or omission occurs after the twentieth day of June, eighteen hundred and sixty three, the back taxes shall be charged whether the tract contains one thousand acres or a greater or less quantity. Any assessor failing to make such entry and assessment shall forfeit twenty dollars."

And neither Shreve nor the Assessor, were ignorant of the pro-

visions of this section, as is shown by Shreve's paper furnished the Assessor in reference to the assessment of the lands when entered on the land books, and the action of the assessor in assessing them. And the evidence in the case shows conclusively, that the Assessor of Webster county, in entering the lands claimed by the appellants in this case on his land books, violated every provision of this section 28, except as to the assessment of the lands, and that he did this *fraudulently*.

1. There were no such tracts of land as the Welch 105,000 acres, or the Messingbird 12,500 acres, or a McClary tract of 100,000 acres, or a Banks 58,500 acres to *be* entered on the land books of Webster or of any other county. And if the assessor did not *know* this fact, he would have learned it in the performance of his duty as required by this section 28. By the plain reading of that section the assessor was required to *ascertain* that these lands, or a part of them, were in his district, and that some person *had title* to them, "by patent or otherwise." And by performing his duty he would have learned that no patents were ever issued either to James Welch, or to any person as his assignee, for said 105,000 acres, nor to George Messingbird, or to any person as his assignee, for said 12,500 acres. And that no patent was ever issued to Henry Banks for 58,500 acres, or to any person as his assignee.

And in the same way he would have learned that no patent for 100,000 acres of land was ever issued to William McClary, and that said McClary did not have title to any such tract of land "by patent or otherwise." And, consequently, that neither of said tracts could lawfully be entered on his land books. And if he had performed his duty in the premises, this suit would never have been brought, and honest people would never have been put to the trouble and expense of defending their titles to the lands in question in this suit.

But Shreve and the assessor, as the evidence shows, had *fixed* things to their mutual satisfaction, and while the assessor was not to *attend* to his *duties* as the law requires him to do, *he*, as Shreve had assured him, was to "be attended to." And so he entered every tract of land mentioned in Shreve's list sent him, in the way and manner Shreve required it to be done, in violation of said section 28; even, to charging them with the taxes of the year 1868, alone.

And the way in which he made these entries on the land books was a fraud.

THE BANKS 58,500 ACRES.

As already stated, no such tract of land as this was ever patented to Banks. But in 1787, eighty-one years before, Banks made 53 contiguous surveys, mostly of 1000 acres each, amounting in the aggregate, to 58,500 acres. But he never filed but 43 of these surveys with the Register of the land office at Richmond, Virginia, for patents to be issued on them. And of these 43 surveys Banks, himself, never obtained patents for but *nine* of them of 1000 acres each.

Record, p. 372.

And, as will fully appear hereafter, no part of either of these tracts patented to Banks, is included within the boundary lines of the lands claimed by the plaintiffs in this suit.

But the whole 58,500 acres is charged in said land books in the name of "Banks, Henry, residence, "New Jersey." If Banks lived in New Jersey in 1868, he must have been considerably more than 100 years old at the time. But he was not alive and did not reside in New Jersey in 1868.

The surveys of Welch and Messingbird were both made in 1795, seventy-three years before the entry of the 105,000 acres, and the 12,500 acres entered and charged in said land books to them, respectively.

And so far as appears from the record, there was no tract or part of a tract of 100,000 acres of land in Webster county to which William McClary had title "by patent or otherwise,"

And, therefore, the entry on said land books of 100,000 acres in the name of "McClary, Wm.," residence "N. J.," amounted to nothing, except to a fraud. The tract of 100,000 acres claimed by the appellants under the purchase of the said 100,000 acres sold for the taxes charged thereon, in the name of "McClary, Wm.," and purchased by Albert Owen and B. Rich is claimed by the appellants, as the tract of 100,000 acres granted by the Commonwealth of Virginia to William McCreery by patent bearing date January 21st, 1796, a copy of which patent is on page 174 of the record.

The appellants wil probably claim that the entry on the land books of the 100,000 acres in the name of "McClary" instead of "McCreery," was done by mistake, but this, if true, does not help them, as will be shown hereafter.

The survey of the McCreery tract was recorded in the record book of surveys made in Randolph county in the possession of Shreve, and is not to be supposed that a patent was issued by the governor of Virginia to William McCreery upon a survey made in the name of William McClary. And it is certain that there is no mistake in the name "McCreery," in the patent, as it occurs three times, and is always spelled "McCreery."

This tract, as we have seen, had been on the land books of Nicholas for eleven consecutive years, at least, and in 1850 was sold for the taxes thereon, and there were, doubtless, many persons living in that vicinity in 1868 who were not ignorant of its existence and locality. And Shreve had good reason to believe that if this tract should be advertised for sale for the taxes charged thereon, in the proper name, William McCreery, the citizens would be looking after it, and there would be competition in the bidding at the sale. And this was the the very thing Shreve wished to avoid. He did not want bidders in West Virginia, whom he knew would not bid blindly upon a tract advertised for sale in the name of Wm. McClary, when the records failed to show that *McClary* had title to any such tract of land. And it is altogether probable that he caused this tract to be entered in the name of McClary, as a blind.

And the court will observe that Mr. G. P. Shreve, the son of John B. Shreve, did not join in the purchase of this tract.

But no matter what the reason of Shreve may have been in having this 100,000 acres of land entered and charged with taxes on the land books in the name of "McClary, Wm.," it was either a *fraud* or a mistake, if the McCreery 100,000 acres was intended, and the purchaser of it at a tax sale, as we shall see hereafter, could get no title to it.

But it answered Shreve's purposes as well to have it entered and sold in the name of McClary, as in any other name, in-asmuch as when the sale *was* made the end for which Shreve had been working, would be accomplished, title or no title.

He was working for the benefit of himself, not of the purchasers.

And now having procured the entry of the tracts of land mentioned in his list to the assessor, in the way and manner he desired it to be done, a new chapter in the scheme opens to our view.

In May, 1869, "a gentleman of leisure" as he styles himself, (record 354) of the name of Albert Owen, of Pennsylvania, who after the manner of another "gentleman of leisure," who lived in a warmer climate, had been "going to and fro in the earth," and "walking up and down in it," (Book of Job, 1–7) visited Shreve at his home in West Virginia, in relation to the sales of the lands for taxes to be made in Webster county.

Record, pp. 354, 361.

This witness, Albert Owen, gave two depositions in the case, the first of which is on pages 354 to 361 of the record, and the second begins on page 466 of the record and with the exhibits, extends to the end of the record.

On his visit to the home of Shreve he was shown by him he says, "a large folio book of land surveys dating back from 1780 to 1795," as near as he could recollect. He says: "These plots purported to be surveys of Edward Jackson and his assistants or deputies, and from their antiquated appearance seemed to be original."

This book was the property of Randolph county, and one of its public record books, and Shreve's possession of it was unlawful.

Shreve told him he had known Jackson the deputy land surveyor and had been shown by him the original corners, land marks and lines of a large number of the surveys to which these papers referred, and that "he probably knew more about the lands of West Virginia than any man living." Record pp. 354, 355, 467.

Shreve also informed him that there would be a sale of many of these lands for delinquent taxes in the following autumn, and he made a contract in writing with Shreve which speaks for itself.

In his second deposition on page 468 of the record, he produces and files a copy of his said contract with Shreve, as exhibit "B," as part of his deposition, as follows:

"EXHIBIT 'B.' E. M. BLANCHARD, EXAMINER.

"This agreement between John B. Shreve, of Upshur county, in the State of West Virginia, of the first part, and Albert Owen, of the State of Pennsylvania, of the other part, made this first day of May, A. D. 1869, witnesseth:

"That whereas the said John B. Shreve, a surveyor of lands is in possession of the original plots, records and field notes of the two first surveyors of Randolph county (embracing parts of Upshur, Webster and Braxton counties) and having been on the

ground and shown by one of the old surveyors many of the corners in the surveys made from the year 1787 to 1795; and having under the laws of West Virginia entered upon the commissioner's books in the counties aforesaid sundry tracts of land, to wit: one tract of 12,500 acres in the name of George Messingbird; one tract containing 105,000 acres in the name of James Welch; one tract of 100,000 acres in the name of Wm. McClary; one tract containing 100,000 acres in the name of Alexander Walcott; three tracts containing 110,000 acres in the name of Benjamin Reede; one tract containing 100,000 acres in the name Joseph Titball; and one other tract of the same name of 20,000 acres; one tract of 50,000 acres in the name of Robert Patton; one tract in the name of Wm. Bridges, containing 30,000 acres; one tract containing 30,000 acres in the name of Wm. Bowen; and one tract of 200,000 acres in the names of Charles Sims and Charles Lee, which said tracts of land will be subject to sale during the present year for delinquent taxes, now the said John B. Shreve agrees to survey, plot and identify to the said Albert Owen or others under him the several tracts of land herein named, and to give to the said Albert Owen the use of the old record book and all plots, papers and field notes, &c., in the possession of the said Shreve, and also to show to the said Albert Owen or others under him the original corners identified to the said Shreve by one of the old surveyors upon the ground, and by chain-carriers who were along when the said surveys were made. And the said Albert Owen herein agrees to pay the said John B. Shreve two thousand dollars for each and every tract of land surveyed, identified and plotted as aforesaid of one hundred thousand acres, and in the same proportion for larger or smaller tracts surveyed, identified, plotted, &c., in the following manner, to-wit: The said Owen is to pay the said Shreve seven hundred and fifty dollars to defray expenses when each survey is made; and when the said Owen or any one for him shall purchase at the tax sales tracts of land so surveyed, then the said Owen is to pay to the said John B. Shreve an additional sum of twelve Hundred and fifty dollars for each one hundred thousand acres so surveyed and identified, by showing the plots and records aforesaid, and purchased or redeemed as aforesaid.

"And the said John B. Shreve further agrees to assist the said Albert Owen in time and information necessary to be done to acquire the said lands by tax title under the laws of the State of West Virginia, and in all matters pertaining thereto the said Shreve is to work for the interest of the said Albert Owen and none others.

"In testimony whereof, we hereunto set our hands and seals this the day above written.

"JOHN B. SHREVE, [SEAL.]
"ALBERT OWEN, [SEAL.]"

And no one after reading this contract will doubt the capacity of Shreve for taking care of himself.

It was made in advance, even, of the publication of the notices of the sales of the lands mentioned in it. It included among others, the Welch 105,000 acres, the Messingbird 12,500 acres, and the McClary 100,000 acres, all of which lands, as the evidence shows, are now claimed by the appellants in this suit. And here the attention of the Court is called to the way in which Shreve took care of himself.

By the terms of this contract, Shreve was to survey, plot and identify to said Albert Owen, or others under him, the several tracts of land "mentioned in the contract, in advance of the sales of the land." And Owen was to pay him "two thousand dollars for each and every tract of land surveyed, identified and plotted as aforesaid, of 100,000 acres, and in the same proportion for larger or smaller tracts surveyed, identified, &c."

And Owen was to pay $750.00 of this sum to defray expenses when each survey was made in advance of the sale of the land.

And when Owen or any one for him purchased at the tax sales any of the tracts so surveyed, *then* the said Owen was "to pay to the said John B. Shreve an additional sum of twelve hundred and fifty dollars for each one hundred thousand acres so surveyed and identified, by showing the plots and records aforesaid, and purchased or redeemed as aforesaid." And thus John B. Shreve was to have the last dollar of *his* pay as soon as Owen or any one for him purchased any of such tracts of land, no matter what followed.

And chapter 31, section 15, of the Code of West Virginia of 1868, in force in 1869, when all the sales in question were made, and still in force, provided as follows:

"15. The owner of any real estate so sold, his heirs or assigns, or any person having a right to charge such real estate for a debt, may redeem the same by paying to the purchaser, his heirs or assigns, within one year from the sale thereof, the amount specified in the receipt mentioned in the tenth section, and such additional taxes thereon as may have been paid by the purchaser, his heirs or assigns, with interest on said purchase money and taxes, at the rate of twelve per centum per annum, from the time the same may have been so paid."

Shreve of course, knew all about this Statute of his own State, and he knew further that there was no danger of any of the per-

sons in whose names the lands had been entered and charged with taxes, or any creditor of theirs, appearing to redeem them from such sales when made. But he took care even to provide against remote and improbable contingencies.

Owen, having thus procured an agreement with Shreve to his satisfaction, and having induced Shreve to turn traitor to the first party with whom he had made an agreement *not* in writing, returned home, as he says, to raise funds to attend the prospective sales of the lands, and now the defendant Benjamin Rich, is first introduced to our notice. Owen, in his efforts to raise money, made the acquaintance of Rich and others, and Rich with two or three of his friends agreed to furnish $1,000 and take a corresponding interest in the lands to be purchased.

And as to this matter Owen says: "He, or any of them, was to have the right to be present at the sale, but I was to do the bidding in my own name, and he or they could be present to show that the transaction was fair upon my part." And thus it appears that at the very outest they were all conscious of being engaged in a transaction of at least, doubtful propriety, and lacked confidence in the good faith of Mr. Owen, and as the result of this want of confidence, all of these persons, except Rich, when the time of the sales approached, declined to engage in the contemplated purchases, and Rich, alone, went with him to the sale. Record, p. 468.

The counsel of the defendants regarded it necessary to clear this trio, Shreve, Owen and Rich from all imputation of fraud in connection with the entry of the lands in question on the land books, and the sale and purchase thereof for taxes, and they propounded to him this question:

"These plaintiffs here have said in their bill that you, Shreve and Rich conspired together to defraud them of their lands, and as part of that conspiracy had these lands assessed or returned in 1868, is that true in whole or in part?"

He answered thus: "There is no part of the allegation true. There were no acts by either of any of us named, that could possibly give rise to such an allegation," &c. Record, p. 478.

And he goes on to explain that neither Rich nor himself, had anything "to do with the assessment of the lands," as he calls it, and says: "Rich, I believe, went there for the first time about Sept. 23d, 1869, and I think, ignorant of the situation and all

that had transpired in reference to the assessment of the lands except what he got through me." And but for this unfortunate slip, he might have set up the same defence for himself, as he did not meet Shreve until the next year after the *assessment*, as he calls it, of the lands. But Rich, when he engaged with Owens to purchase them, did *know* something about the *assessment* of these lands in 1868, by Shreve and the assessor, and that *something* was what Owen told him. And what Owen told him, was, of course, what Shreve had told him. And while neither of them had anything to do with it in the beginning, they knew all about it before the sales and aided and assisted Shreve in the consummation of the fraud and conspiracy, with a full knowledge of all the facts in relation to it, and were all equally guilty.

DEPOSITION OF JOHN B. SHREVE.

This deposition begins on page 329 and ends on page 343, of the record, and is remarkable only for what Shreve could not remember. He gives no account or explanation as to the entries of the lands in question on the land books of Webster county by his direction and procurement, and does not pretend to have had any authority from any person claiming an interest in the McClary 100,000 acres, the Banks 58,500 acres, the Messingbird 12,500 acres, or the Welch 105,000 acres, or otherwise, for procuring the entry of either of them on said land books.

And he denies that "he ever made any arrangement with any parties, either verbally or by correspondence, in regard to the purchase of these lands when they should be sold by the sheriff for the delinquent taxes thereon." Record p. 333.

THE SALES OF THE LAND IN QUESTION.

On the 24th day of September, 1869, on a court day, a sale of the land in question claimed by the appellants, was made at the court house of Webster county for the taxes unlawfully assessed on them for the year 1868.

The list of the sales so made, certified and returned by the sheriff, appears in the record on pages 175 to 180.

This list shows that the Henry Banks 58,500 acres was purchased by Albert Owen, G. P. Shreve and B. Rich, for $11.20.

That the Messingbird 12,500 acres, was purchased by these same gentlemen for $2.61.

That the McClary 100,000 acres was purchased by Albert Owen and B. Rich, for $41.82; and,

That the Welch 105,000 acres was purchased by Albert Owen for $21.97.

As a matter of course in *these* cases none of the lands so sold were redeemed, there being no persons who had title to any of them, and the State having the title to all of them, did *not have* to redeem them. And on the 28th day of September, 1870, four days after the expiration of the one year allowed for redemption, James Woodzell, Recorder of Webster county, executed so called deeds for each of the said tracts of land, as follows:

For the Messingbird 12,500 acres to Benjamin Rich and Thornton Courow, assignee of Albert Owen and G. P. Shreve. Record p. 181.

For the Welch 105,000 acres, to Benjamin Rich and Thornton Courow, assignees of Albert Owen. Record p. 187.

For the McClary 100,000 acres, to Benjamin Rich and Thornton Courow. Record p. 27.

And for the Banks 58,500 acres, to Benjamin Rich, in part assignee of Albert Owen and G. P. Shreve. Record, p. 192.

And as to the persons present at these sales, Albert Owen says:

"Rich was present, Jno. B. Shreve was present, Granville P. Shreve was present. Land agents and lawyers from many of the surrounding counties were present, The sale was had, and was somewhat animated. I purchased a long list of tracts of land, large and small, bidding at random, a list of which purchases, certified, I still have in my possession, and herewith produced. (A copy thereof, by request, is made by the notary and filed with this deposition.) The amount paid by me, as receipted in this list, is one hundred and fifty-four dollars and fifty-four cents, ($154.54.)"

Record p. 356.

This copy was the memorandum of the tracts purchased by Owen, made and certified by the sheriff, dated Sept. 24, 1869, and is found in the record, p. 486. It shows that he purchased 27 tracts of land, amounting in the aggregate, to more than 500,000 acres, for the sum of $154.54. And among all the land agents and lawyers, and others, present at the sale, no one was simple enough to compete with him in the purchase of either of these tracts of land.

This fact, alone, should have been an effectual warning to all outsiders, not to purchase any of these tracts of land, when lawyers, land agents and other citizens of the State would stand by and see the lands, by the hundreds of thousands of acres, sold to persons outside of the State, for a fraction of a cent per acre, and never, in a single instance, make a bid for any of them.

But this was not the only warning he had, the witness James Gilleland, who had, himself, abandoned the idea of purchasing lands at these tax sales, because he had come to the conclusion that no titles could be had to the lands to be sold, warned Rich against purchasing any of these lands.

Record, p. 328.

DEPOSITION OF BENJAMIN RICH.

This deposition is on pages 346-7-8, of the record. He became personally acquainted with Shreve, he says, five or six days before the sales of delinquent lands in Webster County, September 24, 1869. And from what we see of Benjamin Rich, in the record of this case, it is not to be supposed that he failed to utilize these five or six days in gathering from Shreve what information he could as to the lands to be sold. He *feigns* ignorance of the terms of the contract between Shreve and Owen in reference to the lands Owen had agreed with Shreve to purchase, and under which he, and his friends, had agreed to join Owen in purchasing, and to furnish $1,000.00 in cash for the purpose. He understood, he says, that Owen had some sort of a contract with Shreve, but did not know definitely what it was, until within the last three or four years.

This deposition in which he makes this statement was taken November 24, 1884, so that according to this story, he learned the contents of this contract, for the first time, about the time this suit was brought, and in ignorance of its terms, he had stood by Owen in carrying it out, when all of his friends had abandoned him. No person who will follow the track of Rich through this record will believe this story.

He says, (p. 347 of the record) that *he* bought the "McCleery tract" under an agreement with Owen that he might do so, in his "own name," while Owen swears he bid in all the tracts, himself, and the certificate of the Sheriff who made the sales, returned to

the Clerk's office, says that this tract was bought by Albert Owen *and* B. Rich, thereby corroborating Owen and contradicting Rich. Record, p. 178.

As a matter of course, Shreve and Rich fell out with each other over these dealings as to these lands, as such people always do, and got into a lawsuit. And on the 23d of September, 1881, Rich gave a deposition in that case, a copy of which, marked Exhibit, "Y. Z." was filed with his deposition in this case, and read in connection with it. Record, pp. 349 to 352. And in this deposition he gives a long account of his interviews with Shreve in reference to the lands to be sold for taxes, and he swears (p. 350 of this record) that he agreed with *Shreve* "to buy one tract, known as 'Col. Wm. McClary,' 100,000 acres; to pay 2,000 dollars when I got the deed; corners and lines sufficient to identify it shown to me or county surveyor, I agreed to pay this two thousand ($2,000) dollars to John B. Shreve as a bonus for his information and services as stated above; Owen, in my presence, agreed to take one tract of 105,000 acres, known as 'James Welch,' one of 187,000 acres, 'Joseph Patterson,' and some others, Shreve went with us to attend the sale, I bought the above tract, 'Col. Wm. McClary,' Owens bought several." These two depositions of Rich don't run well together. In this, he swears that he bought this McClary tract by an agreement *with Shreve*, and states the terms of the contract under which he bought it. In his first deposition in this case, he swears he bought this same tract *at the sale* in his *own name*, under an agreement with Owen.

According to the evidence in the case Owen did the bidding for all the tracts in question in this suit, and he says they were struck off to him as the *highest* bidder, and that "there were competing bidders there." Record, pp. 482–3.

Neither of these statements, in view of the facts appearing of record in the case, *can* be true as to any of the lands claimed by the appellants. If more than one bid is made on a tract of land sold for taxes it is struck off to the *lowest* and *not* to the *highest* bidder. And the *lowest* bidder is one who agrees to pay the sum which has to be raised by the sale, for *less* than the whole tract. And the evidence as to the sales of the tracts in question in this suit, including the deeds of the purchasers, show that in each case the whole tract was sold, and that Mr. Owen had all the bidding as to these tracts, to himself.

It may have been true as to the other tracts.

TAX-DEEDS—TO WHOM AND WHEN EXECUTED.

On the 28th day of September, 1870, James Woodzell, Recorder of Webster county, executed to Benjamin Rich and Thornton Conrow, a pretended deed for the said 100,000 acres of land, entered and charged with taxes, and sold as aforesaid, in the name of Wm. McClary. Record, p. 27.

And on the same day said Recorder executed a pretended deed to Benjamin Rich and Thornton Conrow, "assignee of Albert Owen and G. P. Shreve," for the 12,500 acres entered and charged with taxes, and sold, as aforesaid, in the name of George Messingbird. Record, p. 181.

And on the same day, said Recorder executed a pretended deed to Benjamin Rich and Thornton Conrow, assignees of Albert Owen, for the 105,000 acres entered and charged with taxes, and sold as aforesaid, in the name of James Welch. Record, p. 187.

And on the same day said Recorder executed a pretended deed to Benjamin Rich, in part assignee of Albert Owen and G. P. Shreve, for the 58,500 acres, entered and charged with taxes, and sold, as aforesaid, in the name of Henry Banks. Record, p. 192.

And it is rather a noticeable fact, that Albert Owen and G. P. Shreve, before the execution of these pretended deeds, had deserted the "sinking ship." (I hope to be excused for using the words, *pretended deeds*, so often.)

And on the 3rd day of October, 1872, said Recorder executed to Benjamin Rich and Thornton Conrow, a pretended deed for the 100,000 acres of land entered and charged with taxes, and sold as aforesaid, in the name as stated therein, of "Viscount Clifford de Fleury." Record, p. 189.

After the execution of the pretended deeds aforesaid, Benjamin Rich became the active, moving, leading spirit in the future conduct of the scheme to rob other people of their lands, and he commenced his operations as early as 1870, if not sooner. The first thing he did, so far as the record shows, was to subsidize James Woodzell the recorder of Webster county by employing him as *his* agent and attorney in reference to what he called *his* lands. As recorder, Woodzell had the care and custody of all the county records, and was the officer whose duty it was to execute all tax deeds for lands purchased at tax sale. And it was

of special importance to Rich, as we shall see, to have this man in his pay and under his control.

In a deposition of Woodzell taken by the defendants (record p. 426) he said in answer to questions of defendant's counsel, that a deed for 100,000 acres of land "to Viscount Clifford de Fleury" was recorded in his office October 1st, 1869, and this was all he said about it. Who was the grantor in the deed, when and where it was made, what land was conveyed by it, and where situate, he did not say, and the counsel of defendants failed to ask him, and he was careful not to file a copy of the deed with the deposition.

For some unexplained reason Rich had evidently learned that his deed for the 100,000 acres sold in the name of Wm. McClary, was worthless, and conveyed no title to himself and Conrow to this tract of land.

And having, as clearly appears from the evidence in the case, complete control of the county authorities of Webster county, he determined upon the desperate venture of procuring title, if possible, through this deed to de Fleury, by having this 100,000 acres of land entered and charged with taxes on the land books of Webster county for the year 1870, then having it returned delinquent in the name of de Fleury, and sold for the taxes of 1870 in his name. From past experience he was familiar with this way of doing business. And as before when the land was sold for the taxes, to buy it in the name of himself and Conrow, which was done.

And in 1871, this tract of 100,000 acres was charged on the land books of that year to B. Rich, with a note in the column for remarks, "transferred from *Fleury*," and this was before the land was sold for the taxes charged on it. More of this further along. The entry of this tract in the name of de Fleury is involved in mystery, and this mysterious transaction I propose, if possible to unravel.

It will be tedious work, but in the interest of justice I feel that it must be done.

And I will begin this work by calling the attention of the court to the following provisions of the laws of West Virginia prescribing how and by whom the land books of a county must be made out, and what disposition shall be made of them afterwards.

In 1870, the act already referred to of 1863, providing for the assessment of taxes, had become chapter 29, of the Code of West

Virginia. And Section 31, of that chapter provided as follows:

"31. There shall be in the land book for every assessment district separate lists for the townships included in such district; and every tract of land shall, for the purpose, of taxation, be entered in the list for the township in which the same or the greater part thereof is situated, and the entries in each township list shall be arranged in the alphabetical order of the names of the owners."

The attention of the court is also called to so much of the provisions of the following sections of said chapter 29 of said Code, as are quoted:

"77. He (the assessor) shall also make three fair copies of the land book, and when the same are completed he shall present them to the recorder of the county, who shall, with such assistance as may be necessary, compare each copy thereof with the land book of the preceding year. * * * When theexamination is completed * * * the recorder shall append to each of them a certificate to the following effect." The certificate is to the correctness of the book, and it is not deemed necessary to copy it.

"78. As soon as such comparisons and corrections have been made the assessor shall make and subscribe the following oath at the foot of each of the land books."

The oath is to the correctness of each book.

"79. The assessor shall on or before the first Wednesday in August next ensuing, deliver one copy * * * of the land book to the clerk of the board of supervisors of the county, to be by him carefully preserved among the records of his office."

"80. The assessor shall deliver another copy of each of said books (the land and property books) to the sheriff or collector of the county, on or before the fifteenth day of August."

"81. The remaining copies of each of said books shall be transmitted by the assessor to the Auditor on or before the first day of September."

"83. The originals of the land books and personal property book made out by him shall be retained by the assessor so long as he continues in office, and then be delivered to his successor."

And the court will observe that the copy for the auditor, is the last one to be delivered.

And it so happened that the copy of the land book of 1870, for Webster county delivered to the auditor, was the only copy of that book ever found to contain the entry of this tract of 100,000 acres in the name of de Fleury, and instead of being entered in that copy in its proper *alphabetical* order, it was entered in a blank space therein, between the letters "M" and "N."

This desperate venture was not resorted to without some special object in view, and I am safe, I think, in saying that it was *not* the work of de Fleury himself, as it made no difference to him whether the tract was on the land book for that particular year or not. If it was not on the land book for that year, it could not be returned delinquent, and could not be sold for taxes in 1871. But it did make a difference. as they imagined, to Benjamin Rich and his associates, whose interest, as they believed, lay in having it returned delinquent and sold for taxes at the earliest possible period.

And in-as-much as this Frenchman, de Fleury, never made an appearance in this case, or in any way set up a claim to this land, it is safe to say that Rich and his associates knew he was not in the country, and that haste was all important, as they imagined, to them in having it entered, returned and sold.

And now, I call the attention of the court to the evidence bearing upon this matter, which, as it seems to me, can leave no doubt in the minds of the court as to who were responsible for this forgery.

DEPOSITION OF P. F. DUFFY, AUDITOR.

This deposition is in the record on pages 363 to 370. In answer to questions propounded by plaintiff's counsel, commencing on p. 364, he says:

"I find by examination of the books in my office that there was no land charged in the name of Wm. McClary, William McCleery or Count Clifford de Fleury in the county of Webster, beginning with and including the year 1866, that being the first land book on file in my office for said county. I do find a tract of 100,000 acres of land charged in the name of Wm. McClary in the land books of Webster county for the year 1868, in Glade district, on Gauley and Williams rivers. This entry was made without any note or explanation by the assessor. There appears to be no back taxes charged on said tract."

And on p. 365 he says:

"The land books of Webster county show a tract of 100,000 acres in Glade district charged in the name of Fleury, Viscount Clifford de, for the year 1870, described as lying on Gauley and Williams rivers, southwest 10 miles from C. H., for the year 1870, in that name and sold by the sheriff of Webster county in the year 1871, for the taxes of 1870, and bought at such sale by Benjamin Rich and T. Conrow. B. Rich is charged on the books of

1871, with a tract of 100,000 acres described as situate in Glade district on Gauley and Williams rivers, with a note in the column for remarks, "transferred from Flury."

And here I call the special attention of the court to this false and, in fact, fraudulent note so entered.

The sale of this tract of land, at which Rich and Conrow became the purchasers was not made until the 26th of September, 1871, and they could not get their deed therefor, until the 26th of September, 1872. Record, p. 365.

If de Fleury had conveyed this tract of land to Rich and Conrow, or to Rich, alone, by deed, this entry would have been right and proper. But as he did not so convey it, it was false, misleading and fraudulent.

Again this witness, speaking in regard to the order in which this tract was entered in the books, says:

"I find it entered on the land books between the letters M. and N., and not alphabetically."

And on the same page he makes the following answers:

"The entry of the 100,000 acres in the name of Fleury, Viscount Clifford de, for the year 1870 appears to be in a different hand-writing from the hand-writing on the same page, except footings, which seem to be the same."

"I think it is in the hand-writing of James Woodzell, of the county of Webster."

"I have seen him write, and am familiar with his hand-writing."

"There appear to be erasures in the additions of several columns."

"It does not appear to be charged with back taxes for any year or years on said books, nor does there appear to be any remarks or explanations on said land books touching the entry of said land."

DEPOSITION OF ANDREW McELWAIN.

This witness was the assessor of Webster county for 1870. He was examined twice, first by the plaintiff; record, pp. 306–7, and last by the defendants; record, 415.

In his first examination he was shown a copy of the land book for 1870, then on file in the office of the clerk of the county court of Webster county, and asked if it was in his hand-writing.

He answered: "It is made out in my own hand-writing. I don't

think the land book which I now hold in my hand and now on file in the office of the clerk of Webster county is the one I first returned to the office for the year 1870." Again he says:

"I have examined the book and find that it is made out in the usual form, with the exception of the letters 'A' and 'B,' which are gone, and the larger part of the letter 'C,' and the footings and additions are not carried out. I find on examining the certificate in the back of the book, that I never signed it or qualified to it." And again he says:

"The clerk or recorder of Webster county told me that the original was lost or mislaid, and got the book which I kept at home as a guide, and it has been retained in the office ever since."

On his examination by the defendants, record p. 415, he says:

"This book now here present and referred to is not one of the three official books made out and returned by me, but is a copy of the books I did make out. It is a book I kept for myself as a guide and I afterwards loaned this one to the clerk."

He was then asked by the defendant's counsel if he made and returned three official land books for that year properly certified and sworn to, as required by law, and he answered, "I did."

DEPOSITION OF BALLARD P. CONRAD.

This witness was the clerk of the county court of Webster county at the time the deposition of Andrew McElwain, above mentioned was taken, and their depositions were both taken at the same time. Conrad was also examined twice, first by the plaintiffs (record, pp. 303 to 306) and second by the defendants (record, p. 417.) He says:

"I have examined the assessor's land books on file in my office for the year 1870, and I find no land charged thereon in the name of Viscount Clifford de Fleury."

In answer to a question as to the sheriff's delinquent list for the year 1870, he says:

"I have examined the delinquent list on file in my office for the year 1870, returned by C. McDodrill, then sheriff of Webster county, in Glade district, and find a tract of land of 100,000 acres returned delinquent in the name of 'Fleury, Viscount Clifford de,'" &c.

And in his second deposition he refers to and files as exhibit "A," an extract from said delinquent list showing that this tract was placed in that list between the letters "M," and "N," as it

was on the assessor's book. For this exhibit, see p. 305 of the record.

And this exhibit shows one very remarkable thing. That while this tract as found on the assessor's book in the office of the auditor, was assessed with taxes for the year 1870 only, and not "with back taxes for any year or years" as proved by the auditor. (Record, p. 365) it was returned delinquent not only for the taxes charged against it on that book, but also for $40.00 State taxes for State purposes, and $20.00 for State school purposes for the year 1869.

In his second deposition, taken by the defendants (record p. 417) he says that the entry in the delinquent list of this tract of land in the name of de Fleury, does not differ in hand writing from the other entries on the same page. And he don't think that any part of this delinquent list is in the hand writing of Charles McDodrill, who was the sheriff of the county. The said list, he says, was made out in two or more hand writings.

DEPOSITION OF JAMES WOODZELL.

This witness was also examined twice, first by the plaintiffs (record, pp. 315 to 318) and last by the defendants (record pp. 426 to 429.)

At this point we have evidence of the contents of the original land book of the county for 1870, kept by the assessor for his own use, and that no land was entered and charged with taxes in the name of de Fleury on that book. And we have evidence that in the alleged copy of that book in the office of the auditor for that year there *was* a tract of land entered and charged with taxes to de Fleury, for the year 1870. And now if we can find the other two copies of that book, they may settle the question as to which of the books we have, is right, as to this entry. And Mr. James Woodzell, the, then recorder of Webster county, and the keeper of the records of that county, was the man, as will be seen, who ought to have been able to tell us most about them.

When asked if the assessor filed a copy of the land books of said county for the year 1870, in his office, his reply was: "I presume he did; I have no recollection of it." It may be proper to state here that the clerk of the board of supervisors, and not the assessor, would have been the one to file that copy in his office.

He says he remembers having searched his office at different times for that book but failed to find it. And further he says:

"There was a criminal prosecution against one John C. Cool for forgery, in which he was charged with forging a tax ticket, and the assessors' books for several years were taken out of my (his) office to be used as as evidence in that prosecution," &c. And he thinks that the one filed in his office was one of the books taken, and that it was never returned. He don't remember who took them, though he gave his consent to their being taken. He made inquiries as to the whereabouts of these books, but don't think he ever made any personal effort to get them.

Perhaps, all this can be explained by the following question and answer:

"Are you or not agent or attorney for Benjamin Rich in his land transaction?

Answer:—"I have been acting as his agent in regard to his lands in this county prior—1870 or 1871, up to the present time."

He says further that he has no knowledge of any deed having been made by de Fleury to Rich for this tract of land, and that in the absence of such a deed, the entry in the column of remarks, "transferred from Flury," he don't think was proper.

The deposition of the auditor in which he said that the entry of the 100,000 acres of land in the name of de Fleury, was in the handwriting of Mr. James Woodzell (who turned out to be the agent of Rich) was taken in April, 1885, and the deposition of Woodzell, taken by the defendants, was taken in September, 1886. And although his attention was specially called to the entry of the tract in the name of de Fleury, he does not deny that *he* made this entry, or make any explanation in regard to it.

And so we get no light on this very important matter from Mr. James Woodzell, or the book which should have been in his office.

But there was still one more copy of the land book of 1870; the one delivered by the assessor to the Sheriff of the county, and now let us find out if we can, what became of that copy.

DEPOSITION OF CHARLES McDODRILL, SHERIFF.

This deposition is on pp. 312-13 of the record. He says he received a copy of the assessor's land books for the year 1870, but

he knows nothing about a tract of land of 100,000 acres being charged on that book in the name of "Fleury, Viscount Clifford de" except that he saw it in his delinquent list for that year. In answer to the question, what became of that book? he says:

"To the best of my knowledge and belief, I delivered it to one of James Woodzell's boys at the request of James Woodzell. Mr. James Woodzell asked me to loan him the book about the latter part of last winter, and I brought the book down to his residence and gave it to his son. Col. Byrne came to my house to see the book and I gave him an order to Woodzell for it."

This deposition was taken in October, 1883, and Woodzell had borrowed that book only the winter before, when he could have had no *honest* use for it. At that time he held no office in the county.

He further says in reply to a question:

"I talked to him about it since I gave the order to Byrne. I asked him if Col. Byrne got the book. 'He said he could not find it,' he said he had no recollection of me ever bringing it down to him. I told him that I had delivered it to one of the boys, and also told him I had left it with his boy and he thanked me for doing it. I also told him that it was broke in two and doubled together; and he said it might be that, as he did not look for that kind of a roll or book."

Col. Byrne, who was looking after this book was the counsel of the plaintiffs engaged in taking the depositions in this case.

Woodzell's first deposition was taken two days after McDodrill's (record, p. 315) and he makes no denial or explanation of this evidence of McDodrill.

As to his delinquent list for 1870, McDodrill says, that it is not made out in his own hand-writing, but that he signed it and qualified to it.

Bearing in mind the evidence of Ballard P. Conrad (p. 417 of the record) that McDodrill's delinquent list for 1870, was "made out in two or more hand writings," and none of it in the hand writing of McDodrill himself. And then turning to the exhibit "A" on page 305 of the record, and seeing how this "Fleury, Viscount Clifford de" 100,000 acres, was dove-tailed in between the letters "M" and "N," coupled with the fact that this tract is returned delinquent for $60.00 "back taxes for 1869," not charged against it on the assessor's books of 1870; it is, I submit, perfectly evident that the same person who wrote the entry of this tract of land in the copy of the land book filed in the auditor's office, or

some one in complicity with him, wrote this entry in the delinquent list in a blank left for the purpose, after the sheriff had signed and sworn to it.

And now, can there be any doubt as to who made way with these two copies of the land book of 1870, or why they were made way with? Benjamin Rich, judged from his own standpoint, was the man who expected to be benefitted, and his paid agent, James Woodzell, is directly connected by the evidence, in the disappearance of both these books. And I submit that in view of all this evidence, it is reasonably certain that this tract of land was *not* on either of these missing copies of the land of 1870, and that they were made way with by James Woodzell for that reason.

But their dishonest operations did not stop here.

In 1871, as we have seen (record, p. 365) this tract of land was entered and charged with taxes of that year, in the name of B. Rich, and in the column of remarks the only entry made was "transferred from Flury." And at that time the tract had not even been sold for the taxes of 1870. This entry indicated that the land had been conveyed by deed from de Fleury to Rich, and it was the proper entry to be made, if the land had been so conveyed. And the only way in which this false entry can be accounted for is that the assessor was subsidized by Rich to make it. As it is not at all probable that the assessor committed this violation of his oath of office voluntarily.

The land was sold in September, 1871, for the taxes of 1870, and Benjamin Rich and T. Conrow, as we have seen, became the purchasers.

And on the 3rd day of October, 1872, James Woodzell, recorder of Webster county, executed a pretended deed to Benjamin Rich and Thornton Conrow for this 100,000 acres of land "sold in the name of Viscount Clifford de Fleury." And in this deed Woodzell, the *agent* of *Rich*, is far more discernable, than Woodzell, the *recorder* of Webster county. He went to work to do for Rich and Conrow, what the records in his office failed to do—to *show* a good title to this tract of land in de Fleury, and consequently a good title in Rich and Conrow. This deed is found in the record on pages 189, 190, 191, and the special attention of the court is called to it. The very first recital found in it, that this tract of land was *duly* entered for taxation on the land books of the assessor of

Webster county for the year 1870, in the name of "Viscount Clifford de Fleury," was false, and he knew it was false. He knew that it was *not* "duly" entered on that book. The second falsehood he recited was, that the land was charged with taxes for the year 1870, to the amount of $329.80, when, in fact, the amount of taxes charged against it for 1870, was $270.00 only.

These false recitals are only noticed to call the attention of the court to the character of the man, as they were of no avail to the defendants.

And then he proceeds with a long list of recitals, some of which are false, and two-thirds, at least, of the others unnecessary to be recited, until he reached the climax, as follows:

"And the said tract of land was surveyed for Col. William McCleery on the 23rd day of April, 1795, the same having since been conveyed as appears by sundry deeds and conveyances now upon record in said county of Webster, showing that the same land was held in fee simple by Viscount Clifford de Fleury, but was sold on the 24th day of September, 1869, in the name of William McClary, for the non-payment of taxes thereon for the year 1868, and previous years," &c. Thus commencing and ending with a falsehood. The tract was *not* sold in the name of McClary for the taxes of any year previous to 1868.

And with all due respect to Mr. Woodzell, his statement of matters *alleged* to be matters of record, but not shown *by* the record, can not be accepted and acted on by this court as true. If de Fleury had a recorded title by sundry deeds of record in Webster county, by virtue of which he had McClary's alleged title to this tract of land, the way to prove it was to produce the deeds and make them parts of the record in this case. And the record fails to show a single one of such deeds.

And so, Benjamin Rich and his associates in fraud, ignominously failed to better their title to the 100,000 acres of land entered and sold, and purchased by Rich and his associates, in the name of William McClary, by having the same 100,000 acres entered and charged with taxes in the name of de Fleury, on the copy of the land book of Webster county, of 1870, filed in the office of the auditor, and afterwards sold and purchased by Rich and Conrow, and conveyed, or attempted to *be* conveyed to them, in that name.

But in this instance, their enterprising agent and attorney,

James Woodzell, in his efforts to write up a title for Rich and Conrow to their 100,000 acres, where none existed, overdid himself. In the preparation of this deed he was plainly reaching out after the 100,000 acres of land patented to William McCreery by the Commonwealth of Virginia, as heretofore stated. But in this deed, Woodzell says this "tract of land was surveyed for Col. William McClary," and was, as the language of the deed plainly shows, an *inclusive survey*, containing within its exterior bounds, a large body of land to which another, or others, had a prior claim, valid in law, and which was excepted from the operation of any patent that might have been issued under it. Record, p. 191.

And before the appellants can claim title, successfully, under this deed, they must *show* that William McClary, (not McCreery) had title to this 100,000 acres, and that, *that* title had vested in de Fleury. And this they have not done, nor attempted to do.

This is their second attempt to manufacture a title to the William McCreery tract of 100,000 acres, but like the other it is a miserable failure, if in no other way, by the bungling of their attorney and agent, in stating in his deed, as already referred to, that the *survey* was made for "Col. William McClary." And it is impossible for the appellants under either of their deeds for the 100,000 acres, to connect themselves with the title of William McCreery to the 100,000 acres granted to him, by the Commonwealth of Virginia.

In order to obtain title under either of said deeds, they must find a tract of land, patented to *William McClary*, or otherwise owned by him, answering to the description of the land embraced in said deeds. Their claim to this 100,000 acres is based on a survey for, and a grant to William McClary, and if they fail to find such a survey and patent, they get no land. And having so made their *bed* they must *continue* to LIE in it.

If they set up the claim that the name "William McClary," was, by mistake used for "William McCreery," it will avail them nothing.

See Yancey *v.* Hopkins, 1 Munford, Va. 419, hereafter quoted.

And now I call attention to the last desperate effort of Rich to manufacture a title, where he had none. He had in some way discovered that there was no such tract of land as the 105,000 acres so entered, charged with taxes, and sold for said taxes in the

name of James Welch, and, consequently, that the defendants had no title to any such tract of land. And he went to work to fix up a title to this 105,000 acres, or a part of it, in his usual way. In 1874 he procured the entry of 65,734 acres of land to be made upon the land books of Webster county, and charged thereon with taxes for that year, in the name of Frances Highland, residence, Pa.

And in the column in said books, for remarks and explanations this entry was made, "Heretofore charged 105,000, to B. Rich."

This shows the hand of Rich, or of his man Woodzell, in having this entry made. And Rich in his deposition in his suit with Shreve, (record, p. 351) says: "In 1875 I had to buy the James Welch tract of 105,000 acres over again, in the name of Francis Highland." And this was not the exact truth as will be seen below.

Our old acquaintance, Andrew McElwain was still the assessor of Webster county. The same gentleman who in 1871, was so accommodating to Benjamin Rich, when he entered the McClary tract of 100,000 on the land book of that year in the name of Rich as to enter in this same column of remarks "Transferred from Flury" when "Flury" had made no conveyance to Rich of the land, and before, even, the land had been sold for the taxes of 1870 in the name of de Fleury.

The tract was of course, returned delinquent, as they knew it would be, for the non-payment of the taxes. They knew that Francis Highland, of Pennsylvania would not *turn up* to redeem it.

In October, 1875, the tract was sold by the sheriff and purchased by B. Rich. But it appears by the return of the sheriff of the sales made by him, that this tract was sold in the name of *Thomas* Highland, and not *Francis*. And this, of itself, was sufficient to vitiate this tax sale, even, if in all things else, it had been right and proper.

And on the 30th day of October, 1876, the clerk of the county court of Webster county, made a pretended deed of conveyance of said tract of land to Benjamin Rich, Thornton Conrow and Walter Wood. Record p. 211–12.

And the question now occurs, what title did Francis or Thomas Highland have to this 65,734 acres of land?

No patent or deed to either of them for it, is found in the

record, and no attempt was made by the defendants in their depositions, or otherwise, to *show* that either of them had title to said tract of land, or any part of it.

And under the laws of West Virginia, and the evidenee in this case, the appellants derived, under their said deed, no other title to said 65,734 acres of land than *Thomas* Highland, the person in whose name the land was sold, (and I will say, also, Francis Highland) had in it, when it was sold for the taxes thereon, as aforesaid.

And the burden of proof of title (I will say) in either of them, was upon the defendants. Smith *v.* Lewis, 2 West Virginia 39, 51, 57.

And this brings us to the Appellants *last ditch*, from which they propose to defend and maintain their title to the lands claimed by them in this suit.

They insist that the title of the State of West Virginia to the lands of the plaintiffs forfeited to the State in September, 1876, has, under and by virtue of Section 3, Article XIII, of the Constitution of West Virginia, vested in them.

This Section of said Article is as follows:

"All title to lands in this State, heretofore forfeited, or treated as forfeited, waste and unappropriated, or escheated to the State of Virginia, or this State, or purchased by either of said States at sales made for the non-payment of taxes, and become irredeemable, or hereafter forfeited or treated as forfeited, or escheated to this State, or purchased by it and become irredeemable, not redeemed, released or otherwise disposed of, vested and remaining in this State, shall be and is hereby transferred to and vested in any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees) for so much thereof as such person has or shall have had actual, continuous possession of, under color or claim of title, for ten years, and who, or those under whom he claims, shall have paid the State taxes thereon for any five years during such possession, or if there be no such person, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees) for so much of said land as such person shall have title to, regularly derived, mediately or immediately, from or under a grant from the Commonwealth of Virginia or this State, which but for the title forfeited would be valid, and who, or those under whom he claims, has or shall have paid all State taxes charged or chargeable thereon for five successive years, after the year 1865, or from the date of the grant,

if it shall have issued since that year, or if there be no such person as aforesaid, then to any person other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees, for so much of said land as such person shall have had claim to and actual, continuous possession of, under color of title, for any five successive years after the year 1865, and have paid all State taxes charged or chargeable thereon, for said period."

The claim of the appellants to the lands in question under this Section of the Constitution of the State, is not based upon a *title* to any lands formery *owned* by Banks, McClary, Messingbird or Welch, but is for lands formerly *owned* by Allen T. Caperton in his lifetime, and by his heirs at law, plaintiff's in this suit, since his death. These lands it is admitted, were forfeited to the State of West Virginia on the 24th day of September, 1876, and were not redeemed from said forfeiture, by the plaintiffs, until August 8th, and 11th, 1881. The theory of this claim is that their said deeds, even if fraudulent and void, are nevertheless, a good *color of title* to the lands embraced within their boundaries, sufficient, with the necessary possession of said lands under them, to transfer to, and *vest in* them the State's title to said Caperton's lands acquired by said forfeiture. And this necessary possession they claim to have had. And we deny both of their contentions.

The title of the State to forfeited lands is, under the provisions of this Section, transferred to and vested in three classes of persons (excluding those in default, their heirs and devisees) as follows:

1. To *any* person "for so much of said land, as such person has or shall have had actual, continuous possession of, under color or claim of title for ten years," &c.

2. And if there be no such person, then, to *any* person "for so much of said land as such person shall have title to, regularly derived, mediately or immediately, from or under a grant from the Commonwealth of Virginia or this State, which but for the title forfeited would be valid," &c., and

3. And if there be no such person, then to *any* person, "for so much of said land as such person shall have had claim to and actual, continuous possession of, under color of title, for five successive years, after the year 1865," &c.

It has never been pretended, and, probably will never be pretended, that these appellants are entitled to any of the Caperton

lands, on the ground that they have brought themselves within either the *first* or *second* of said classes.

But their claim has been, and, probably, will continue to be, that, by their evidence, they *have* brought themselves within the *third* class of persons provided for by said section.

And *this* claim is most emphatically denied by the plaintiffs.

The attention of the court is here again called to the maps of the lands claimed by both parties found in the record, already referred to. Their *claim*, and, alleged *color of title* covers in all, 276,000 acres of land, but the whole of the lands so claimed by the appellants are not in controversy in this suit. This controversy is confined to those parts of the lands owned by Allen T. Caperton in his lifetime, and by the plaintiffs, his heirs at law, after his death, within the exterior boundary lines of the 100,000 acres granted to William McCreery by the patent aforesaid, and within the exterior boundaries of the patents aforesaid granted to Abner Cloud, A. C. and D. B. Layne, and Austin Hollister; the boundary lines of all which lands are shown upon the said maps.

And by reference to the diagram colored brown, on the map next to page 459 of the record, it will be seen that no part of the *nine* tracts of land of 1,000 acres each, patented to Henry Banks; lies within the boundaries of the lands so in controversy in this suit as aforesaid. All of the said *nine* tracts are shown by the name "Banks," printed on said map.

The McCreery patent for 100,000 acres was issued upon what was called and known in Virginia as an "inclusive survey" and included within its exterior boundary lines, nearly all of the 77,104 acres of the prior survey and patent of Robert Morris, for said 53,900 acres, and a part of the said Abner Cloud tract of 5000 acres granted to Cloud by patent dated the 10th day of March, 1790.

These portions of the Morris and Cloud tracts included within the exterior boundary lines of the McCreery survey and patent, were, by operation of law, excluded from the *operation* of the McCreery patent, and no title vested in him to that portion of said lands covered by his said patent, previously granted to Morris and Cloud.

The act of the General Assembly of Virginia authorizing these inclusive surveys to be made, and their effect *when* made, was passed June 2nd, 1778, and is found in full on page 274 of the case of Halsted *vs.* Buster, 140 U. S. referred to below.

This Act, and the legal effect of a patent issued under it, has been passed upon and settled adversely to the claims of these defendants, in the following cases:

Hopkins *vs.* Ward, 6 Munford (Va.) 38.
Nichols *vs.* Covey, 4 Randolph (Va.) 355.
Trotter *vs.* Newton, 30 Grattan (Va.) 582.
Patrick *vs.* Dryden, 10 West Va. 387.
Brian *vs.* Willard, 21 West Va. 65.
Madison *vs.* Owens, 6 Little's Select Cases (Ky.) 281.
Scott *vs.* Ratliffe, 5 Peters, U. S. 81.
Armstrong *vs.* Morrill, 14 Wallace 120.
Halsted *vs.* Buster, 140 U. S. 273.

These cases are all in accord with each other, and hold plainly and distinctly, that all *valid* prior claims to lands in an inclusive survey and patent are excepted from the operation of such patent, and the title to such prior claim does not pass to or vest in the patentee named in such patent.

And they hold further, that where no patent issues upon a *prior* survey, included, in whole or in part, within the exterior lines of an *inclusive* survey, the lands embraced in said *prior* survey remain as waste and unappropriated lands and as such liable to entry, survey and patent, by others.

But, if McCreery's survey had *not* been an *inclusive* survey, he would not have acquired title by his patent under it, to any part of the lands covered by it, which had been previously granted by the Commonwealth of Virginia to Abner Cloud, and to Robert Morris. The Commonwealth having parted with her title to these portions of her lands to Cloud and Morris, had nothing left to grant to McCreery, so far as these portions of said lands were concerned.

There was a way, if this had been the situation, in which he might have afterwards obtained title to the said lands, in the absence of the actual possession of any part of their lands by Robert Morris and Abner Cloud, or those holding under them, of any part of their said lands. But the evidence in the record fails to show that William McCreery, or any person holding under *him*, ever had the *actual* possession of any part of the lands within the boundary lines of his said patent, either inside or outside of the Cloud or Morris lands.

But this was *not* the situation. And the deed by which Woodzell, the Recorder, attempted to convey to Rich and Conrow the William McCreery 100,000 acres of land, as a tract of 100,000 acres patented to William McClary, gave them no title whatever to the lands previously granted to Cloud and Morris, even if the McCreery tract could have been conveyed to them in that way which the plaintiffs deny.

In their 7th specification of error the appellants say:

The court below erred in not holding that the defendants "had actual and continuous possession of the lands in controversy since 1869, and at the time of suit brought."

Now let us see the evidence given by them in support of this *modest* claim.

The first witness produced by them in support of this claim was the Recorder of Webster county, and attorney and agent of B. Rich,

JAMES WOODZELL.

And, according to his evidence, he ignored the Recorder, but stood up to his work as the attorney and agent of Rich, "like a little man."

On page 426 of the record he testifies as follows:

"Mr. Rich and Mr. Mullins made a verbal contract some time in June, 1871, in my office, which Mr. Rich directed me to put in writing. The contract was, in substance, that Mr. Mullins, who was then living on Mr. Rich's land, should continue on it, and have general oversight over it, cultivate as much of it as he might wish to, and range his cattle on it, and deliver to Mr. Rich the possession he had of the land. And Mr. Rich was to give Mullins 200 acres of land at any place he might designate within the lines of Mr. Rich's land. Mr. Mullins a short time afterwards come to see me about it, but would not have it at that time reduced to writing, saying that his son, little Bill, was to get 100 acres of the land and he wanted to wait until his son came up, when he and little Bill would both come over and have the contract put in writing. I told him to continue in possession of the land and to keep off any person who might want to come on it without authority from Mr. Rich or myself, and to bring his son over when he came up and I would give him the writing. He and his son both came over afterwards and I gave him the written contract and directed them both to continue in the possession of the land.

the "I file as part of my deposition a copy of said contract, marked ri[illegible]."

And as this contract is a most remarkable document I will insert it here for the convenience of the court, as a specimen of the legal acumen and zeal of the attorney and agent, in the service of his employer.

It is found on pages 429–30, of the record.

"Articles of agreement made and entered into this 10th day of May, 1872, between Benjamin Rich, of the county of Center, State of Pennsylvania, of the one part, and William Mullens, Sr., of the county of Greenbrier, State of West Virginia, of the other part: Witnesseth, that for the consideration hereinafter named, he said Benjamin Rich has this day leased or rented unto the said William Mullens for the term of three years, a tract of one hundred thousand acres, which said land, or so much thereof as the said William Mullens may desire, he is to cultivate and use for the said term of years, and to have general possession of the remainder, subject to the orders of the said Benjamin Rich. The said Benjamin Rich also agrees to make to the said William Mullens, seigner, a good and sufficient deed or conveyance for two hundred acres of land to be laid off in one or more parcels, as the said William Mullens so may chose out of either of the following surveys, viz: 100,000 acres, known as the McClary tract; 105,000 known as the Welch tract; 58,500, known as the Banks tract; in consideration whereof the said William Mullens so this day sells to the said Benjamin Rich his possession or squatters right to the land where he now lives, and agrees to hold the same in possession for the said Bonjamin Rich for the term of three years and to pay to the said Rich the sum of one dollar per year for the term of nineteen years, commencing with his first possession of the said land and extending through a period of nineteen years and expiring three years hence, the said William Mullens, Sr., having had the same in possession for the term of sixteen years, and at the expiration of the said nineteen years the said Rich agrees to make the conveyance aforesaid. It is to be understood that the said William Mullens agrees and designates one hundred acres where he now lives as part of the two hundred to be conveyed to him by the said Rich.

"Witness the following signatures and seals.

"J. WOODZELL, [SEAL.]
"*Attorney in fact for B. Rich.*

"WILLIAM his X mark MULLENS, [SEAL.]

"Received this 10th day of May, 1872, of William Mullens, Sr.,

the sum of sixteen dollars, it being the amount of rent due on t within lease.

"BENJAMIN RICH, f
"*By his Attorney James Woodzell.*" t

The court will observe that the boundaries of 100,000 acres c land so leased are not given, and it is not even stated what par or parts of the adjoining three tracts were included in that remarkable lease.

And it is not stated in said lease what lands Mullens lived on, whether inside or outside of the lands in controversy in this suit. But it does show that the possession of the land wherever it was, constituted only a "squatter's right," and that Rich *bribed* Mullens by the promise of a deed for 200 acres of the land to ente into the contract. And not only this, he agreed that he was t tenant of Rich at a rent of one dollar per year for the past 16 years, which dated back to 1856, thirteen years before Rich obtained his fraudulent and void deeds to the lands mentioned in them. And according to the receipts endorsed upon the contract Mullens paid up his arrearage of rent due Rich at the date of the lease. *Of course he did.*

And this *honest* and *reasonable* contract is the only evidence in the record of the possession of the lands in controversy by the appellants, dating back to 1869. I can't see that it proves that possession.

There is no *evidence* in the record as to how long William Mullens had been in possession of the scrap of land on which he was *squatting* at the date of this contract, whether 16 years, one year or one month. The contract bears date May 10, 1872, and the plaintiff's evidence already referred to (p. 314 of the record) shows that Mullens removed from and abandoned the possession of the lands he so lived on and agreed by said contract to live on, in the Spring of 1874, but two years after the date of said contract. And the evidence of Mullens was not taken by the appellants, and their failure to take it, is not explained.

The place occupied by Mullens, Woodzell says, "Was on Williams River, at what it is generally called the Three Forks and within the McCreery tract."

The place called the Three Forks of Williams River is shown on all the maps, and is not only within the boundary lines of the McCreery 100,000 acres, but is also within the boundary lines of

the Robert Morris tract of 153,900 acres, and within the boundaries of the 77,104 acres of said Morris survey, conveyed by John Williams and wife to Allen T. Caperton.

And the evidence of the plaintiffs as to the possession of this same place where Mullens lived shows that it was leased by Allen T. Caperton, July 8, 1874, to Mark Hammons and was occupied by said Hammons, M. J. Stiltner, R. C. Clevinger and Peter Hammons as the tenants of the said Allen T. Caperton and these plaintiffs under said lease from its date, certainly, to the end of 1877. And so the possession of Mr. Mullens amounts to nothing in the case, and can't be *tacked* on to the possession of any one else, to help the appellants.

On page 427 of the record Woodzell says:

"I put Jesse Hammons, Peter Hammons and Peter Barb in possession of Rich's lands, I think in 1871, it might possibly have been in 1872, but I think it was in 1871; and some time afterwards I put N. F. Smith, I think they call him Nath Smith, and I believe I put Arthur Hamrick into possession, but I am not positive about that, and, I put Wilbern Baldwin into possession. These were all to take and hold possession of the three tracts I have mentioned, except that they were not to interfere with each other, or with any person who might be in possession under authority from Benjamin Rich or myself. I gave Smith a contract about six years ago." (This deposition was taken September 13, 1886). Continuing he says: "He (Smith) went into it about the time I gave him the contract and he built a house, I think it was in the McClary tract, near the line of the McClary and Banks tracts, but I think on the McClary side of the line, I have never seen that line run through. It was on the waters of Gauley river on the mountain between Gauley and Wm's river. I never was there but once, and I got lost in going there. I think I put Wilbern Baldwin into possession between six and seven years ago. He was living then on the lands on Cranbery river, on the McClary tract.

"I put Jesse Hammons into possession of all three of these tracts, particularly where he then lived and where he now lives, which is on the left-hand fork of Wm's river, some two or three miles above the three forks. I put Peter Hammons in possession of all three of the tracts, but I don't know exactly where he settled; somewhere near the three forks of Williams river, as I understand. Peter Barb was on the land, and continued on the land under me, on Leatherwood creek, in the Banks and Welch surveys."

How did he put Jesse and Peter Hammons and Peter Barb or any of the others, in possession of the Banks, McClary

and Welch tracts of land? He gave them no leases for them, verbal or written, but simply says, he put them in possession of these three tracts, 263,500 acres, which according to the evidence of Jesse Hammons, himself, was almost, wholly, a wilderness.

Then he says he put Jesse Hammons in the "possession of all three of these tracts, particularly where he then lived and where he now lives," (the date he gave his deposition, September 13, 1886.)

Now, where did Jesse Hammond live either in 1871, or 1872? He could not, according to the showing of Woodzell himself, in the contract with Mullens, have lived at the Forks of Williams river, where Mullens lived in May, 1872, because Woodzell says in that contract that Mullens had been living there for sixteen years.

And no matter where he lived, he had not, so far as the evidence shows, been living there as the tenant of Rich, or of any of the appellants. And where did Jesse Hammonds live at the date Woodzell gave his deposition? September 13, 1886. And I submit that there is nothing in all the evidence of Mr. Woodzell, taking it all to be true, just as he states it, that, even, tends to prove the *actual* and *continuous* possession of any part of the lands claimed by the appellants in this suit, by them, for any length of time, long or short, which can avail them in any way in this suit.

DEPOSITION OF JESSE HAMMONS.

This deposition is on pages 437 to 440, of the record. And, as already appears, was taken September 11, 1886; which date is necessary to be borne in mind.

In answer to questions by defendant's counsel, as to his residence and how long he had lived on Williams river, he said, "I think about 23 years, I am living about two miles and a half above the forks" (of Williams river) "at what I call the Aldridge place. I live on the main or North fork of the river and on the left hand side as you go up." And then, he was asked by the counsel to state where he had lived since the fall of 1869. And he answered:

"I think I have lived on Williams river, where I live now, and at a place at the forks of the river about two miles and a half below it, all the time, except two years that I lived elsewhere than on said river, which move has been within that period. I

can't be certain, but I have lived there at these two places for the last twelve years, part of the time at one place and part of the time at the other place. I went from the lower place to the place where I now live about four years ago, and I had gone to the lower place from where I now live about three years before."

According to his evidence he had lived at two different places, seemingly, on lands claimed by the appellants. And in answer to the question who he claimed these two places under while he was living there, he answered:

"For the last twelve or thirteen years I have claimed it under Mr. Rich; before that I claimed from a hunter's possession."

He was then asked, whether, at any time after he took possession or claimed under Rich, Mark Hammons was in possession of either of these places? and he answered:

"I put Mark Hammons into possession of one of the places to raise a crop one year, but I can't remember whether it was before or after that time; this was the lower place."

Like all witnesses who testify to the best advantage for their employer, this man, when the shoe pinched, had a bad memory. On his examination by the counsel of the defendants, he could not remember whether he put his brother, Mark Hammons in possession of the place, before or after he (Jesse) took possession or claimed under Rich. He could not remember how long Mark remained on the place. He *thought* Mark moved on the place with his family; and he thought M. J. Stiltner lived on the place after Mark moved off.

On cross-examination by plaintiff's counsel he was asked whether "William Mullins ever lived on the place at the forks of the river; and, if so, at what time?" And he answered:

"Yes, sir; I don't recollect. I think about twelve years ago."

In answer to the question, "What kind of a contract did you have with Rich—whether written or verbal?" he said: "I had one verbal contract and then one written contract." And when asked the date of the verbal contract, he answered:

"I think it must have been twelve or thirteen years ago." And as to the date of the written contract, he said, "I don't recollect how long it has been, but since that."

The record of this contract bearing date the 2nd day of February, 1881, was then produced and shown him, which he recognized as correct, and filed a copy of it as exhibit "B H" as part of his deposition. Record, pp. 439, 440–41.

A copy of that agreement dated February 2d, 1881, is on page 431–2 of the record.

This is another interesting document which I feel called upon to insert here for the convenience of the court.

"James Woodzell, Ag't for Benjamin Rich, to Jesse Hammons. } Contract for 50 Acres of Land.

"This agreement made the second day of February, in the year 1881, between James Woodzell, agent for Benjamin Rich, of the one part, and Jesse Hammons, of the other part, witnesseth: That whereas, William Mullins, generally known as 'Vandy Bill,' entered into a tract of 100,000 acres of land known as the McClary tract, and made an improvement thereon at the forks of Williams river, about the year 1856, which improvement he sold to Jesse Hammons, party hereto, about the year 1869; and whereas, the said Jesse Hammons, in the fall of 1878, sold or traded to Benjamin Rich, the owner, of the 100,000 acres, the said possession and improvement, for which the said Benjamin Rich agreed to pay to the said Hammons fifty acres of land of the said 100,000 acres and at the same time leased to the said Jesse Hammons the whole of the said 100,000 acres; now therefore, this agreement witnesseth: That in consideration of the above premises the said James Woodzell, as agent for the said Benjamin Rich agrees to and with the said Jesse Hammons that the said Benjamin Rich shall make to the said Jesse Hammons a deed for fifty acres of land to be laid off out of the said 100,000 acres, at such place and such shape as the said Jesse Hammons shall elect, either in or out of the 'Vandy Bill' improvement, except that the said fifty acres shall not be in length any more than twice its breadth, and shall not include the possession of any other person to whom the said Rich may have sold or promised land out of said 100,000 acres. The said deed to be made within two years from this date, and the said Jesse Hammons agrees to hold possession of the said 100,000 acres and keep general oversight thereof for the benefit of the said Rich and pay to the said Rich the sum of one dollar per annum as he has heretofore done.

"Witnesseth the following signatures and seals:

"JAMES WOODZELL, [SEAL.]
Agent for B. Rich.

"JESSE his X mark. HAMMONS. [SEAL.]"

This contract was made, written and executed by James Woodzell, agent for Benjamin Rich, and, of course, with the approval of Rich, as he never repudiated it, and in it he and his friend, Jesse Hammons recite some very remarkable things, when con-

sidered in connection with his contract with William Mullens, as the agent of Rich, nine years before. After reciting that Mullens had entered into a tract of 100,000 acres of land known as the McClary tract, and made an improvement thereon at the forks of Williams river, about the year 1856, they say:

1. That Mullins sold this improvement to Jesse Hammons about the year 1869, and

2. That Jesse Hammons in the fall of 1878, sold or traded to Benjamin Rich, the owner of said 100,000 acres, the said possession and improvement, for which said Benjamin Rich agreed to pay the said Hammons fifty acres of land of the 100,000 acres, and at the same time leased to the said Jesse Hammons the whole of the said 100,000 acres, &c. But they forgot to fix the time for which the lease was to run.

According to the statements contained in this contract, Mullens had sold his possession and improvement to Jesse Hammons, more than two years before he, Mullens, and Woodzell had joined in the other remarkable contract, whereby Mullens sold this same possession and improvement to Benjamin Rich, and of which he was still in possession more than two years afterwards.

Now, where was Jesse Hammons all these four years and more, during which Mullens remained on *his* possession and improvement, and sold and disposed of it to Rich, and took a lease from Rich of 100,000 acres, including it, that he failed to put in an appearance and claim his property?

According to his evidence he was living in that very neighborhood at the time, unless it was during the two years that he lived elsewhere. And according to Woodzell he put Jesse Hammons, with others, in possession of the whole of the McClary tract, with others, he thinks, in 1871, but, certainly as early as 1872. And according to all this, Jesse Hammons, while he was the owner, by purchase from Mullens, of this possession and improvement of Mullens, stood by for nearly five years and permitted Mullens to sell this same improvement and possession, as his own, to Benjamin Rich, and to remain on said premises for two years, or more, as the tenant of Rich.

And when, in 1874, Mullens abandoned the premises on which he lived up to that time, Jesse Hammons had no agency in his removal. Where Mullens removed to, and what became of him,

the record fails to show, unless he is the same William Mullens to whom Craig gave the lease in 1881, which is not likely.

But Jesse Hammons is, plainly, not a success as a witness. He *thinks* he had lived on Williams river for the, then, last 23 years, except for two years that he lived elsewhere. Where did he live on Williams river? At what period of the 23 years did he live the two years elsewhere? And where did he live during these two years? He fails to state any of these important things, and his failure is not, at all, favorable to the Appellants.

He says *he* put his brother Mark Hammons in possession of the place Mullens left, the same spring Mullens removed from them, and either this statement is false, or George M. Sawyer, M. J. Stiltner and R. C. Clevinger have committed perjury, and the lease of Caperton to Mark Hammons, as it appears in the record, is a forgery, *which is most likely*?

And it is a rather singular fact, that according to Jesse's recollection, Mullens had lived on the place he moved from, at the forks of Williams river, about twelve years before, 1886. And his verbal contract with Rich spoken of in the written contract of February 2, 1881, inserted in this brief was made twelve or thirteen years before 1886, but he was entirely oblivious of the date of that written contract made but little over five years before. (He was doubtless ignorant of the fact that this contract had been recorded.) And that he had claimed the land he levied on twelve or thirteen years prior to 1886, under Benjamin Rich.

But there are occasions in human affairs in which providence seems to interfere to thwart the best laid schemes of bad men. And this, I am led to believe, is one of them. Counsellor and agent Woodzell set his legal brain to work to compose an instrument of writing, that would, in his opinion, not only close out the Capertons from ever regaining the title to their lands, which had been forfeited to the State, but would vest that title in these appellants under the provisions of the Constitution referred to. And this mental effort on his part, resulted in the contract between himself as the agent of Benjamin Rich and Jesse Hammons just alluded to. But the dead-fall they prepared for the plaintiffs fell upon and crushed the defendants.

The contract deliberately prepared by them shows upon its face that Jesse Hammons never became the tenant of Rich, nor in any way claimed any of the lands in question under him, until the fall of 1878, less than three years before this suit was brought.

And so, both Woodzell and Jesse Hammons signally fail to prove that the appellants had the *actual* and *continuous* possession of *any* part of the lands in question for *any* five years before the commencement of this suit.

But the appellants examined seven other witnesses, viz: Peter B. Barb, Moses Napoleon Barb, Adonijah Cogar, George M. McFarlane, Christopher Bingham, Andrew McElwain and R. C. Clevinger, in the vain effort to prove the necessary possession by them of the lands in question; to vest in them the forfeited title of the plaintiffs therein.

And now let us see what these witnesses prove.

PETER B. BARB.

The lands occupied by this witness were on Leatherwood within the block of surveys made by Henry Banks and outside of the boundary lines of the lands in question, as is shown by the "Decree Map," as well as by the map at page 459 of the record already alluded to and explained. And in addition to this he entered into the possession of this land under a contract with Bernard Molohan in 1867, and continued to hold under Mollohan until he left the premises in 1875, and paid his rent to Mollohan for the whole time. Record, pp. 435–6–7.

MOSES NAPOLEON BARB.

This witness occupied the place on Leatherwood his father left from 1875 to 1878, and then removed to Gauley river, also in the Banks block of surveys, but outside of the lands in question in this suit. And both of these places were outside of the *nine* tracts of 1,000 acres each, patented to Banks. Record pp. 434, 435.

And, therefore, neither of the Barbs proves anything for the appellants in this case.

ADONIJAH COGAR.

This deposition was taken September 11, 1886. In answer to the question whether he had ever occupied or improved any part of the McClary tract of 100,000 acres of land, and if so, when, where, and under whom such improvement was made and held. He answered:

"I recon I have, on Williams river, about nine or ten years

DEPOSITION OF CHRISTOPHER BAUGHMAN. Record, 12/2, 446, 447. (Left out in printing)
Proves nothing for the defendants, his possession commenced in 1877 too late to be of service to them. It was but 4 years before the suit was brought. And nine of 9000 acres of land patented to Banks lies within the boundaries of the lands in question in this suit. (See map at page 459 of the record.)

ago. I got the lease from Mr. Jesse Hammons. I was there pretty much all the time off and on. I made improvements where I lived about eight years ago. I made the improvements under Jesse Hammons."

Record, pp. 444, 445.

This deposition proves nothing for the appellants for two reasons. (1) Because his occupation of the premises commenced too late to be of service to the appellants, and (2) He occupied the premises under Jesse Hammons, and not under Rich, or *any* of the appellants.

And as we have seen in discussing the evidence of the plaintiffs of their possession of these same premises, Jesse Hammons was occupying the premises he leased to Cogar, as the tenant of the plaintiff's under the lease of Allen T. Caperton, their father, to Mark Hammons.

GEORGE M. McFARLANE.

The evidence of this witness is absolutely worthless for any purpose, to any person. He was, he says, acquainted with William Mullins, Jr., and rented of one of Mullins' tenants a piece of land within the McClary tract. The first he knew of Mullins' occupation of that land, was "about the first of May, 1882." Nearly a year after this suit was brought. Mullins, he says, claimed the land under Benjamin Rich "by having a lease on it." The improvements where Mullins lived, he says, in answer to a question, "From all appearances it looked like it might have been made from two to three years when I first saw it in 1882."

This ends the evidence of appellants' possession by ttheir own witnesses. And having failed to prove a single material fact, tending to prove the necessary possession of the lands in question by themselves to vest in them the State's title to the Caperton lands, they tried their luck at proof by two of the plaintiffs' witnesses, Andrew McElwain and R. C. Clevinger. *

ANDREW McELWAIN.

They proved by McElwain that he bought 300 acres of land from Rich, said to be a part of the Banks 58,500 acres, and had his title bond for it, 6 or 8 yeare prior to the time he was giving his deposition (September 11, 1886) and that, at the same time, he took a lease from Rich for the balance of the survey. His lease

was, of course, verbal, as he says nothing about a writing. Nor does he state the location of his 300 acres. If his purchase and lease was 8 years before he testified, it was in 1878, and if 6 years, it was in 1880, and in either case, it was less than 5 years before this suit was brought. Record, p. 416.

And so far as the possession of the land was concerned, he never had any. So that, even if the Banks lands were involved in this suit, which, as we have seen, they are not, the evidence of this witness avails the defendants nothing.

R. C. CLEVINGER.

And, finally, they proved by Robert C. Clevinger that he had two conversations with Benjamin Rich, the first about ten years before the day of his examination as a witness (September 11, 1886) and the second about six years before. At this last conversation, he says, he claimed the land on which he was living under Rich, and also under Adams. He says: "I bought of Adams, and Mr. Rich said it was his land. I said if it was I would work on it under him."

And in answer to the question, "How long before the last conversation referred to had you claimed the said land under Rich?" He answered:

"I didn't claim land under him until after the second conversation I had with him."

He was then asked if Rich did not tell him in the first conversation that he was on his land and must get off. And he answered:

"He had some such conversation, and said that I was living on his land and I left the land." Record, p. 421.

He was recalled by the plaintiffs (record, pp. 424, 425) and testified, among other things, as follows:

1. That when he removed from the land spoken of, he "moved over to Mr. Hamrick's land to a place" he still lived on.

2. That he bought the land he was living on from Mr. Adams, seven years prior to the time he was testifying (September 11, 1886) and occupied it ever since.

3. That when Rich said the land belonged to him he told Rich *if he* was living on *his* land, he was willing to work on it under him.

4. In answer to the question, "Did you live on it under him?" He answered:

"Of course; I reckon I agreed to occupy it under him, if it was his land. *I was to have a piece of land when this suit ended.*" And so Rich, in his hunt after witnesses commenced with bribery and ended with bribery.

The italics are mine. I desire to call attention to the price Rich *agreed* to pay for evidence worth nothing to him after he got it. And,

5. In answer to the question as to the date of the last conversation, and how long he occupied the land under Rich? He answered:

"I can't state exactly. I will have to say four or five years ago. It may be longer, or it may not be so long."

At any rate it only dates back to about the time of the commencement of the suit. And it does not even appear where the land he so claimed was situate, whether in or out of the boundary lines of the lands in controversy.

And so ends the evidence given by the defendants to prove their title to the lands in controversy under and by virtue of section 3, of Article 13 of the Constitution of West Virginia.

And now, before leaving this matter of possession, I desire to call attention to the evidence of Jesse Hammons as to the condition of the country in which the lands in question, in the way of improvements must have been in 1870–71, fifteen years before he gave his deposition. This evidence is as follows:

Question by counsel for plaintiff–:

13. Is or is not the section of country of which the forks of W'ms river is situated an extensive wilderness.

Ans. Yes; a good deal of what I call wilderness.

14. How far is it from that point down the river to any settlement?

Ans. About six miles.

15. How far is it up the river from the forks to a settlement?

Ans. They call it 12 miles; 14 or 15 miles from the forks of the river.

16. How far is it south to any settlement?

Ans. It must be 25 or 30 miles.

17. How far would it be in a north direction from the forks of the river to the settlement?

Ans. Six or seven miles to its edge.

18. State what kind of roads lead to the forks of W'ms river.

Ans. Little paths with the brush hacked out, and logs—a heap of them laying— to get over.

19. Can a man ride in from any direction on horseback to the forks of Wm's river?

Ans. They can ride in up the river and up Turkey creek and go over.

20. Did you ever see anybody ride horseback all the way to the forks of Wm's river?

Ans. Yes, sir; I have seen them ride all the way; some lead most of the way.

21. Is or is not that settlement about you principally occupied only by hunters?

Answer. They used to hunt there a good deal, but those there now don't hunt a great deal. There is not much there to hunt for now.

And this is the 263,500 acres of *wilderness* which Woodzell says he put Jesse Hammons, Peter Hammons and Peter B. Barb in possession of in 1870 or 1871, and so far as we can see this is how he did it.

He gathered the three together and addressed them somewhat in this wise:

"I now put all three of you in possession of the Banks tract of 58,500 acres, and the Welch tract of 105,000 acres, and the McClary tract of 100,000 acres, but you must keep out of each other's way, and not interfere, one with the other."

And when we consider the condition of the land, and the size of the boundary they were put in possession of, the necessity of this prohibition, *is quite apparent.*

But the remarkable thing about it is, that both Jess in their evidence, failed to corroborate Woodzell in re possession. They say nothing about it, and the counse fendants asked them nothing about it. But, even, if Woodzell's statement was true, it would not avail the appellants in this case. It was not the kind of possession the Constitution requires to vest the State's title to forfeited lands in an occupant thereof. Nothing short of the *actual, continuous* possession of the lands *claimed* for five *successive* years, under *color of title*, will avail for that purpose.

And I deny that the fraudulent and void deeds under which these appellants claim title to 276,000 acres of land, and more than 60,000 acres of which, is in controversy in this suit, are, even, a *color of title* to a single acre of the land so claimed, inside or outside of the lands in controversy.

It is settled by the decisions of this court, that a tax deed, defective on *its face*, is not a *color of title* to the lands embraced in it.

Walker *v.* Turner, 9 Wheaton, 541, 552.

Redfield *v.* Parks, 132, U. S. 339, 350.

"Of course; I reckon I agreed to occupy it under him, if it was his land. *I was to have a piece of land when this suit ended.*" And so Rich, in his hunt after witnesses commenced with bribery and ended with bribery.

The italics are mine. I desire to call attention to the price Rich *agreed* to pay for evidence worth nothing to him after he got it. And,

5. In answer to the question as to the date of the last conversation, and how long he occupied the land under Rich? He answered:

"I can't state exactly. I will have to say four or five years ago. It may be longer, or it may not be so long."

At any rate it only dates back to about the time of the commencement of the suit. And it does not even appear where the land he so claimed was situate, whether in or out of the boundary lines of the lands in controversy.

And so ends the evidence given by the defendants to prove their title to the lands in controversy under and by virtue of section 3, of Article 13 of the Constitution of West Virginia.

And now, before leaving this matter of possession, I desire to call attention to the evidence of Jesse Hammons as to the condition of the country in which the lands in question, in the way of improvements must have been in 1870–71, fifteen years before he gave his deposition. This evidence is as follows:

Question by counsel for plaintiff–:

13. Is or is not the section of country of which the forks of W'ms river is situated an extensive wilderness.

Ans. Yes; a good deal of what I call wilderness.

14. How far is it from that point down the river to any settlement?

Ans. About six miles.

15. How far is it up the river from the forks to a settlement?

Ans. They call it 12 miles; 14 or 15 miles from the forks of the river.

16. How far is it south to any settlement?

Ans. It must be 25 or 30 miles.

17. How far would it be in a north direction from the forks of the river to the settlement?

Ans. Six or seven miles to its edge.

18. State what kind of roads lead to the forks of W'ms river.

Ans. Little paths with the brush hacked out, and logs—a heap of them laying— to get over.

19. Can a man ride in from any direction on horseback to the forks of Wm's river?

Ans. They can ride in up the river and up Turkey creek and go over.

20. Did you ever see anybody ride horseback all the way to the forks of Wm's river?

Ans. Yes, sir; I have seen them ride all the way; some lead most of the way.

21. Is or is not that settlement about you principally occupied only by hunters?

Answer. They used to hunt there a good deal, but those there now don't hunt a great deal. There is not much there to hunt for now.

And this is the 263,500 acres of *wilderness* which Woodzell says he put Jesse Hammons, Peter Hammons and Peter B. Barb in possession of in 1870 or 1871, and so far as we can see this is how he did it.

He gathered the three together and addressed them somewhat in this wise:

"I now put all three of you in possession of the Banks tract of 58,500 acres, and the Welch tract of 105,000 acres, and the McClary tract of 100,000 acres, but you must keep out of each other's way, and not interfere, one with the other."

And when we consider the condition of the land, and the size of the boundary they were put in possession of, the necessity of this prohibition, *is quite apparent.*

But the remarkable thing about it is, that both Jesse Hammons and Peter B. Barb, in their evidence, failed to corroborate Woodzell in regard to this possession. They say nothing about it, and the counsel of the defendants asked them nothing about it. But, even, if Woodzell's statement was true, it would not avail the appellants in this case. It was not the kind of possession the Constitution requires to vest the State's title to forfeited lands in an occupant thereof. Nothing short of the *actual, continuous* possession of the lands *claimed* for five *successive* years, under *color of title*, will avail for that purpose.

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Walker *v.* Turner, 9 Wheaton, 541, 552.

Redfield *v.* Parks, 132, U. S. 339, 350.

In a suit to set aside a tax deed, for any cause, in West Virginia, the whole of the proceedings upon which the deed is based, of record in the office of the recorder, (now the clerk of the county court) from the beginning to the end, may be looked into by the court, to determine the validity of the deed in question, and any material defect, or failure to perform a duty required by law to be performed by any officer, appearing either on the *face* of the deed, or on the *face* of the *record*, in the office of the Recorder, (or Clerk) vitiates the sale and deed.

The proceedings on which the deeds in question in this suit are based were all had under the Code of West Virginia of 1868, and before the office of Recorder was abolished by the adoption of the present Constitution of that State.

By sections 10 and 12, of chapter 31, of that Code, the sheriff was required to make a list of the lands sold by him for taxes with the following caption, "List of real estate within the county of ————, sold in the month (or months) of ————, eighteen hundred and ———, for the non-payment of the taxes thereon, for the year ———." And underneath this caption he was required to enter in columns prepared for the purpose, among other things the following:

"Name of person charged with taxes."

"Quantity of land charged."

"Estate held therein," &c.

And by section 14 of that chapter it was provided:

"14. The list, with certificate of the oath attached, shall within ten days after the completion of such sale, be returned to the recorder of the county, who shall, within twenty days thereafter, make an accurate copy thereof in a well-bound bound, and transmit the original to the auditer."

In the lists of the sales of the lands so claimed by the appellants, as aforesaid, made and filed by the sheriff of Webster county in the office of the Recorder of that county, he failed as to each one of the tracts, the Banks, the McClary, the Messingbird and the Welch, to enter in the column prepared for the purpose, or elsewhere, the words, "Estate held therein," but on the contrary, he left that column blank, as to every tract and every sale made by him. Record, pp. 175, 178 and 179. And the same failure is found in the list of the sale of the 100,000 acres sold in the name of de Fleury. Record, p. 201.

And the Supreme Court of Appeals of West Virginia have declared the law to be, that a failure to enter these words, "Estate held therein," by the sheriff in his list of sales, renders the sale and deed null and void.

Jones *vs.* Dils, 18 W. Va. 762–3–4.

And I maintain that in-as-much, as the whole of the proceedings from the entry of the land on the land books for taxation, to and including the tax deed in controversy are all considered together in passing upon the validity of the sale and deed, in the courts of West Virginia, that where the matter, whatever it may be, which renders the sale and deed void, appears upon the *face* of the *record* in the office of the recorder, and *not* in the deed; it is in legal effect, the same as if it appeared in the deed itself, for any and all purposes.

And, therefore, that none of these fraudulent and void deeds under which the appellants claim, were a *color of title* to the lands, or any of them claimed by them, in this suit.

But this is not the only thing in the way of their claim to any part of the lands in question. If they *had* proved themselves entitled to any part of said lands, it would only have been for *so much* thereof, as they "had claim to and actual, continuous possession of, for any five successive years after the year 1865." And the appellants utterly failed to prove any such possession by them, of a *single acre* of the lands they claim title to under the provissions of the Constitution of West Virginia, in question.

And if their counsel shall claim that they did have such possession, I will be obliged to them if they will be kind enough to point out on the maps in the record, the place where, and the quantity of land, they had such "possession of."

IV.

The court below had jurisdiction of this case, to the same extent, in all respects, possessed by the State court, from which it was removed.

The question here to be considered, is not, whether the Circuit Court of the United States would have had original jurisdiction of the case if it had been brought in that court. But having been brought in the Circuit Court of Webster county, West Virginia, which court had unquestioned jurisdiction of the case, the same jurisdiction followed the case into the court below, and was properly exercised by that court.

See Delaware County Commissioners v. Diebold Safe Lock Co. 133, U.S. 473.

The courts of Virginia decided long years ago, that a court of equity had jurisdiction to set aside an illegal and void *tax*-sale and deed.

Yancy *v.* Hopkins, 1 Munford, Va. 419, 427, 430, 431.

In this case the land was entered and charged on the land books, with taxes in the name of the mother, who had a dower interest in it, instead of the son who had the fee. And the court below held the tax-sale and deed void on the ground of fraud. And the defendant appealed. And upon the hearing of the appeal, the Court of Appeals held the evidence in the case not sufficient to establish fraud, and reversed the *reasons* of the court below, but affirmed the decree appealed from, on the ground of mistake. And the question of the jurisdiction of the court was raised by the defendant in that case.

The mistake in the case was in the entry, assessment of taxes, sale and conveyance of the land in the name of the mother, when the title was in the son. And there was no dispute as to the fact that the taxes on the land which should have been charged to the son, were due and unpaid.

And the courts of West Virginia have always held that a court of equity had jurisdiction to set aside an illegal *tax*-sale, and tax-deed. *

Forqueran *v.* Donnally, 7 West Va., 114.

Jones *v.* Dils, 18 Id. 759.

Orr *v.* Wiley, 19 Id. 150.

Simpson *et. al. v.* Edmiston, *et. al.*, 23 Id. 675.

Dawson v. Johnson 25 W. Va. 380. 587

And this last case settles another important question which arises in this case, viz: That where a tax-sale and deed are void, neither the grantee in the deed, nor his vendee will be regarded as *bona fide* purchasers; "because a purchaser of land for taxes and all his vendees are deemed to have notice of whatever defects the records in the County Clerk's office, on which the deed is founded, disclose." The Constitution of West Virginia of 1872, abolished the office of recorder, and imposed the duties of that office upon the clerk of the county court.

* And see Boggs v. Hargraves, 138 U.S. 471.

V.

fication of error, were properly read as evidence in the case, in the court below.

These depositions were read by the express consent in writing, of the counsel of plaintiff's and defendants, entered of record in the case. Record, pp. 297, 298 and 453, 454.

VI.

The deeds mentioned in appellant's 15th specification of error, were all properly set aside.

I have no further argument to make in support of this point, than what has already been submitted.

VII.

And finally. As the appellants have no right or title to, nor interest in the lands in question in this suit; and the court below having full jurisdiction and power to render the decree appealed from, that decree should be affirmed, regardless of the other errors, if there be any, in said decree. In-as-much as the appellants have no right, title or interest in, or to, the lands, or any part or parcel of them, in question in this suit, they were not, and could not be *prejudiced* by any such errors.

All of which is respectfully submitted.

JAMES H. FERGUSON,
Of Counsel for Plaintiffs and Appellees.

Note "A."

On the 3d day of February, 1863, an act was passed by the legislature of the restored government of Virginia, the first section of

IN THE

Supreme Court

OF THE

UNITED STATES.

BENJAMIN RICH, *et als., Defendants below and Appellants.*

vs.

TAMLIN BRAXTON, *et als., Plaintiffs below and Appellees.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

SUPPLEMENTAL BRIEF OF COUNSEL FOR APPELLEES.

The title of the Caperton Heirs to lands mentioned in the bill was legally and properly redeemed from the State as it is shown by the Exhibits in the record.

The act in force at the time of such redemption touching said matter was Chapter 95 of the Acts of the Legislature of West Virginia, of the years 1872–3. That part thereof which authorized such redemption is on page 455 of said acts and is a part of the 13th section thereof, and is as follows:

* * * *

"At any time before the sale of any such land as hereinbefore

mentioned, such former owner or creditor of such former owner of such land. having a lien thereon, may pay into court by and with the consent of the court, all costs, taxes and interest due at the time, as provided for in section twelve of this chapter, and have an order made in the order-book of such court describing the amount paid in as well as the character of his claim to said land, which order so made shall operate as a release of all former taxes on said land and no sale thereof shall be made."

This chapter was re-enacted by the Legislature on the 18th of March, 1882, and is chapter 95 of the Acts of said year, and is found on page 259 of said Acts, and the section providing for such redemptions is the 14th section of said chapter, and in substance the same as the former law.

The constitutionality of this section was considered by the Court of Appeals of West Virginia in the case of Wagoner *vs.* Wolf, 28 W. Va. Rep., page 820. The third syllabus of the case is as follows:

"The fourteenth section of chapter 95, Acts of 1882, authorizing the former owner of land, the title of which has been forfeited to and remains in the State, to redeem such land at any time before sale by the Commissioner of School Lands in the manner prescribed by said act, is valid and constitutional."

The law of land titles in Virginia and West Virginia is a system peculiar to itself and is founded upon much state legislation, and it may here be well to recapitulate the method of acquiring title to lands under such legislation. The lands west of the Alleghany Mountains, up to the year 1779, with the exceptions of a few settlement rights and military grants, remained the property of the Commonwealth. In that year the Legislature passed a general act for the disposition of said lands.

The law authorized the issue and sale of land office treasury warrants. The holder of these warrants was authorized to enter any lands belonging to the Commonwealth, and not previously entered by others. Such lands were called waste and unappropriated lands. The holder of the warrant initiated his appropriation of such lands by depositing his warrants in the surveyor's office of the County in which the land proposed to be appropriated was situated, and caused a record to be made in a book therein, called the entry book designating the said land by a description

sufficiently accurate to indicate the land proposed to be taken up by him. The locator was required to have the land surveyed within a certain time by the County surveyor or one of his deputies, and on the filing in the land office at Richmond, of an official copy of such survey, together with a plat thereof, a patent was issued to such locator or his assignee, passing the title of the Commonwealth to him.

The law did not require the lands either to be laid off by meridian lines or surveyed in tracts of certain quantities, but did require that junior surveys should not lap seniors, and that they should be bounded by the lines of such seniors.

Under this act a grant could not be issued knowingly including in whole or in part a prior entry, survey or grant of another.

In consequence of this the General Assembly of Virginia, on the 2nd day of June, 1788, passed the following act:

"Whereas sundry surveys have been made in different parts of this Commonwealth which include in the general courses thereof sundry smaller tracts of prior claimants and which in the certificates granted by the surveyors of the respective counties, are reserved to such claimants; and the Governor, or Chief Magistrate is not authorized by law to issue grants upon such certificates of surveys, for remedy thereof:—

"1. Be it enacted by the General Assembly that it shall and may be lawful for the governor to issne grants with reservations of claims to lands included within such survey, any thing in any law to the contrary notwithstanding." 2 Rev. Code Va. 434.

Grants issued under this act are technically known as "Inclusive Grants."

The upper line of the Morris is the Harrison county line or Randolph county line laid down on the map at page 458 of the Record, crossing Gauley river and extending to a point above the Forks of Williams river, and all of the appellants claims other than the McCreery are situated above the said line.

Under the aforesaid act of June 2nd, 1788, both the Morris and McCreery Grants were issued. The Morris Grant excepted and reserved certain older claims to it which so far as situated in the land in controversy, are located, and numbered consecutively from 1 to 14, and are excepted from the decree. The McCreery is junior to the Morris. The Morris patent recites that the survey on which it was granted, was made on the 16th, 17th and 21st days of April, 1794. Its entry had to precede the survey.

The McCreery recites that it was made on a survey bearing

date on the 23rd day of April, 1795, and recites further that the warrants on which it was founded, were issued on the 4th day of February, 1795. Its entry could not be previous to the date of its warrants and therefore according to these recitals, the Morris was compelled to be near one year the senior. The Morris Grant also preceded the McCreery Grant nearly one year in date.

The McCreery Grant has the excepting clause required by the aforesaid act, which clause is as follows, to-wit:

"But it is always to be understood, that the survey upon which this grant is founded includes thirty-seven thousand and fifty-two acres, which having a preference by law to the warrants and rights upon which this grant is founded, liberty is reserved that the same shall be firm and valid and may be carried into grant or grants and this grant shall be no bar in either law or equity to the confirmation of the title or titles to the same, as before mentioned and reserved with its appurtenances to have and to hold the said tract or parcel of land with its appurtenances to the said William McCreery (except as before mentioned) and his heirs forever."

The effect of this clause under the statute, as interpreted by a long line of decisions of the Appellate Court of the State of Virginia and West Virginia and this Court, was to absolutely withdraw, except and reserve all the Morris land as well as all the other older entries, surveys and grants within the boundaries of the McCreery patent from the effect thereof.

See Scott *v.* Ratliffe, Peters, 81.
Armstrong *v.* Morrill, 14 Wall. 120.
Nicholls *v.* Covey, 4 Rand. (Va.) 365.
Trotter *v.* Newton, 30 Gratt. (Va.) 582.
Patrick *v.* Dryden, 10 W. Va. 387.
Bryan *v.* Willard, 21 W. Va. 65.
Madison *v.* Owens, Litt. Sel. & Cas. (Ky.) 281.
Halstead *v.* Buster, 140 U. S. 273.

In this last case the Martin grant, therein referred to, was the junior and issued under this act.

The court in its opinion, after citing the aforesaid cases, says: "It appears that the Gallatin tract whose survey was prior to the Martin survey and patent, was partially at least within the exterior limits of the latter grant. By the rule therefore established by the decisions, the land within the Gallatin survey was excluded from the Martin grant. No title thereto not even a conditional or inchoate one passed by the Martin patent."

This case in this respect is exactly similar to Halstead *v.* Bus-

ter as to the character and location of the surveys. Only a part of the Morris is in the McCreery, as in that case only a part of the Gallatin was in the Martin.

The exclusion is not limited to the acreage mentioned in the excluding clause, but extends to the actual acreage of prior and older entries, surveys and grants and in law is fully up to that.

And the court in the said case of Nicholls *v.* Covey decided that, if in the event such prior claims should for any cause lapse, the land would not go to the junior inclusive grantee, but would revert to the State subject and liable to be appropriated by others as waste and unappropriated lands.

The 5,000 acre Cloud tract of land was granted on the 10th day of March, 1790, almost five years before the entry of the McCreery, (page 129) and to the extent that this land is situated between the line KL and south of the lines marked by the black letters EE FF and JJ on the map found at page 458 of the Record, it comes within the same principle of law and was excluded from the McCreery grant, and on its forfeiture under the act of the General Assembly of the 15th day of March, 1838, and previous acts, it went back to the Commonwealth and not to McCreery and was disposed of by the Commonwealth to John Williams and passed regularly to the plaintiffs, just as the Gallatin did in Halstead *v.* Buster under the same act.

This was the identical question involved in Halstead *v.* Buster and was there so decided.

The land that actually passed under the McCreery grant was such land as was situated within its boundaries and outside of the prior entries, surveys and grants including the Morris and Cloud.

When the McCreery grant was placed upon the tax lists providing it was ever so legally placed thereon, only such land as was passed by the grant was in law put upon the lists and not the land that was excluded therefrom. And even supposing that by the tax sale thereof Rich and his associates acquired the benefit of the McCreery grant, they only acquired land to the extent that the same had passed to McCreery under the grant and did not acquire any greater rights or any more land than passed under the grant.

It will be noticed that the tax deeds and the surveyor's reports recognize the character of the grant and the deeds only profess to

convey the land that passed to McCreery and the deeds between the parties subsequent to such tax deeds often refer,to the tax deed or in other instances specify the character of the survey on their face and only profess to grant the actually granted land (page 45-6.) The McCreery patent professed to have within its exterior boundaries 137,000 acres of waste and unappropriated land and prior claims.

On a mathematical calculation of the area of said grant, it will be found to contain within its boundaries over 140,000 acres, and their claim that they took by the tax purchase, the whole quantity within its boundaries, older surveys and grants including the plaintiffs lands, is utterly untenable and in direct conflict with the decisions aforesaid.

The 12,500 acre Messinbird survey and 105,000 Welch, otherwise 65,734 acre Francis Hyland survey.

It can be safely said that there is no evidence of the existence of any such titles. The only pretended evidence in in respect to the existence of these tracts is the recital in the tax deeds, that a Messinbird survey was made on the 14th day of May 1795, and a James Welch survey was made on the 1st day of June, 1795. But it appears that no such surveys were ever returned to the land office of the State and that no grants were ever issued by the State to the said parties or their assignees, and that no title of any kind was ever acquired by any one under these surveys, and the entries and surveys under the law lapsed and the land became subject to re-entry and grant as waste and unappropriated land and was so re entered by Hollister and Laynes and granted to them,and whatever possible inchoate title Messinbird and Welch once had, had long since become extinguished, and when such lands were placed upon the tax books and sold and purchased by Rich and others, such sales were of no titles or claim of titles whatever as the original claim had been wholly and entirely extinguished by law, and no title passed by the sale of the Banks lands in Bank's name as Banks never had any grant or title to any of the tracts which conflict with plaintiff's lands.

The claim, that the appellees were entitled to the benefit of the forfeiture of the Caperton title under the constitutional provision, copied in the original brief, is utterly untenable for the following reasons:

First—They had neither title nor claim of title to the Caperton lands within the boundaries of their claims.

This constitutional provision is in some respects similar to the Act of the General Assembly of Virginia, passed March 22, 1842, and copied in the opinion of the Court in the said case of Halsted *vs.* Buster, on page 275 of 140 U. S.

The claim of title in that case was founded on the junior inclusive grant. The claim of title here as to the McCreery is founded on the fact that they purchased at a tax sale a junior inclusive grant.

The Gallatin grant in that case was older and partially within the boundaries of the Martin grant,and here the Morris grant was older and partially within the McCreery grant. The language of the Court upon this question in that case is as follows:

"No title or claim of any kind, legal or equitable, passed to the patentee Martin to any portion of the Gallatin tract." (Page 277.)

Rich and his associates by virtue of the said tax purchase acquired no claim to the Morris and Cloud lands and they do not pretend to have any otherwise.

The tax sale did not profess to be, and was not a sale of the excluded lands. The McCreery Grant, as before stated, professed to have within its exterior boundaries 137,000 acres of land, but as a fact had over 140,000 acres, and the grant, as before stated, in law was only of the waste and unappropriated lands within its boundaries, which were supposed to be 100,000 acres, and to this extent it was put upon the tax books and sold, and the charge upon the land books, and the purchase at such tax sale, are in law limited to the actual waste and unappropriated lands, that passed by the grant, and no greater than that. It passed no more claim to the Morris and Cloud lands than it would if they had been tracts outside of the boundaries of the McCreery. Bowers *v.* Dickinson, 30 W. Va., p. 709.

They have never been charged with or paid any taxes upon the Morris or Cloud lands since the tax sale. The charge of said lands and the payment of taxes since the purchase, has been of 100,000 acres, still following their purchase and making allowance for the supposed amount of prior claims, and intending thereby to exclude them from the charge. The law would limit this charge, or extend it to the amount of the actual land owned within the boundaries by the party in whose name it was charged. If A owns within a boundary of land a parcel of 1000 acres, and B owns the residue, and A is charged upon the assessor's books with 2000 acres, the fact that A is so charged with the 2000 acres, will give him no claim to any part of B's land.

The land which the charge and payment of taxes would cover and include, is ascertained and determined by running out the junior claims, and thereby ascertaining the waste and unappropriated land to which McCreery took title. The boundaries of the prior claims are a part of the boundaries of the McCreery Grant. There is no question or controversy in this cause as to the boundaries of such prior claims. They are well defined and located upon the map.

It is not shown that there were any other prior claims within the boundaries of the McCreery, except the Cloud and the Morris, and they are therefore unquestionably the excluded lands.

The *modest* claim of Rich and his associates is that their purchase of 100,000 acres which in law was a charge of the non-excluded lands, and a charge and payment of taxes on the same, since such purchase, has given them title both to the excluded and non-excluded lands, amounting to 140,000 acres and this was the claim, which they were making when the suit was brought, which they presented in the suit and upon which they are now insisting.

They had no claim of title under the Messinburg, Welch or Hyland. These supposed surveys were never even returned to the land office, and no grants were ever issued thereon and the land lapsed to the Commonwealth and became waste and unappropriated land, subject to entry and grant as if no such surveys had ever existed and the land within the boundaries so far as claimed by the Appellees was entered and granted to Hollister and Laynes and the tax purchases made by Rich and his associates were purchases of no title, or claim of title whatever either legal or equitable, then in existence. The same is true as to the purchases in Banks' name. Banks never had any grant or title to any tracts which conflict with Appellees lands.

They had no claim to any of these lands for an other reason.

It appears from the certificate of the Auditors of the State of Virginia and West Virginia (pages — of the record) that the Messinburg, Hyland, Welch, Banks and the McCleary had never been charged for taxation either to the State of Virginia or West Virginia before said tax sales. and in consequence of this fact even if grants had been once issued to them, they had become absolutely forfeited and extinguished and subject to re-entry and grant, and if not granted before the formation of the State of West Virginia, title could only be acquired to the same under

the Constitution of the State of West Virginia of 1863, by proceedings in the Circuit Court of said State and not by Sheriff's tax sales.

See Hutchinson's Land Titles, pages 39, 103 and 106.

Second—The appellants had no possession of appellees lands.

The alleged possessions of the witnesses Peter B. Barb and Moses N. Barb, as shown by them, was on Leatherwood Creek, a branch of Elk River, which it will be observed from the map, (page 449) is wholly without the plaintiffs lands and they at said place, as it also appears from their depositions, lived upon the land of one Mollohan and were his tenants. It is not shown that the witness, Moses N. Barb, when he moved to Gauley River, moved within appellees lands.

The alleged possessions of the witness McFarlane did not commence till the year 1882 after the lands were redeemed and after the institution of this suit.

The alleged possessions of Jesse Hammons, Cogar and others at the Forks of Williams River, were within the boundaries of the Morris, one of the excluded tracts, and which we have before shown was not granted to McCreery but excepted from the grant, not charged at the time of the tax sale, and not sold, and with which Rich and his associates have not been charged since the sale, and upon which they paid no taxes whatever.

The alleged possession of the witness Baughman is not shown to have been within the appellees' lands.

The claimed posession of the witness McIlwaine is not shown to have been within appellees' lands and the deposition of said party shows that such claimed posession had been abandoned long before the institution of this suit. The proof does not show that the posession of Smith was within the appellants claims and the evidence of the witness Craig shows that this party was a tenant under the appellees.

It will be noticed that the last amended bill of the appellees does not concede or admit that the appellants had any possession of appellees' lands, and as a matter of fact no such possession has been shown. The possession at the Forks of Williams River is shown to have been by the appellees or parties holding under them who, in consequence of such holding were in law tenants of appellees.

The true title to the lands was undoubtedly in the appellees and the law presumes the possession to be with such title. But it